No. 2260

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United States
Circuit Court of Appeals
For the Ninth Circuit.

A. W. LUEDERS,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the Western District of Washington, Southern Division.

FILMER BROS. CO. PRINT, 330 JACKSON ST., S. F., CAL.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys.

ELMER M. HAYDEN, Esquire, #408 Perkins Building, Tacoma, Washington, and

MAURICE A. LANGHORNE, Esquire, #408 Perkins Building, Tacoma, Washington,

Attorneys for the Plaintiff in Error.

C. F. RIDDELL, Esquire, United States Attorney, Federal Building, Seattle, Washington, and

JOHN J. SULLIVAN, Esquire, Assistant United States Attorney, Federal Building, Seattle, Washington,

Attorneys for the Defendant in Error.

United States District Court, Western District of Washington, Southern Division.

July Term, 1913.

No. 1192.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. W. LUEDERS,

Defendant.

Indictment.

The United States of America,
Western District of Washington,—ss.

The grand jurors of the United States of America, duly empaneled, sworn and charged to inquire within and for the Western District of Washington, upon their oaths, present:

That heretofore, to wit, on or about the 23d day

of February, 1912, one A. W. Lueders, within the Southern Division of the Western District of Washington, and within the jurisdiction of this court, while he was a bankrupt under the Bankruptcy Act, did wilfully, knowingly, fraudulently and unlawfully conceal and cause to be concealed from one J. M. Phillips, who was then and there the duly appointed, qualified and acting trustee in bankruptcy of said A. W. Lueders, a bankrupt, certain property to which said estate then and there had a certain right, claim and interest to the title therein, the extent of which is to these grand jurors unknown, to wit: Certain lands situated in the county of Morrow, State of Oregon, described as follows: The east half of the northeast quarter of section twenty-seven (27); [1*] the north half of section twenty-six (26); the northeast quarter of the southwest quarter of section twenty-six (26); the north half of the southeast quarter of section (26) twenty-six; the southeast quarter of the southeast quarter of section twenty-six (26); the south half of section twenty-six (26); the south half of the north half of section twenty-six (26); the north half of the north half of section thirty-six (36); the west half of the northeast quarter of section thirty-five (35), all in township three (3) south of range twenty-five (25) east of the Willamette meridian, and the southwest quarter of the northwest quarter and the northwest quarter of the southwest quarter of section thirty (30), in township three (3) south of range twenty-six (26) east of the Willamette meridian, said

*Page-number appearing at foot of page of original certified Record.

property being then and there of great value, to wit, of the value of twenty-five thousand dollars ($25,000.00); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

B. W. COINER,
United States Attorney,
LOUIS E. SHELA,
Assistant United States Attorney.

Witnesses examined before grand jury:

J. M. Phillips.	Mrs. L. W. Reinhardt
Carl Buege.	P. E. Alvord.
Helen King.	N. E. Winnard.
J. A. Veness.	G. R. Snider. [2]

[Endorsed]: "Presented to the Court by the Foreman of the Grand Jury in Open Court, in the Presence of the Grand Jury, and Filed in the U. S. District Court, September 20, 1912. Frank L. Crosby, Clerk. By Frank M. Harshberger, Deputy." [3]

In the District Court of the United States for the Western District of Washington, Southern Division.

No. 1192.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

A. W. LUEDERS,
Defendant.

Demurrer.

The defendant, A. W. Lueders, demurs to the in-

dictment and to the first and only court contained therein, upon the following grounds:

I.

That said indictment does not state any facts sufficient to charge this defendant with an offense of having knowingly and fraudulently concealed, while a bankrupt, any property belonging to the estate in bankruptcy, and that said indictment is vague, indefinite and does not inform defendant of the specific offense with which he is charged, the charging part thereof being only a conclusion which should be properly drawn from stated facts.

II.

That said indictment is in form and manner insufficient to charge this defendant with the commission of a crime.

WHEREFORE, defendant prays the judgment of this Court as to whether or not he shall be compelled to [4] further plead to said indictment.

MAURICE A. LANGHORNE,
ELMER M. HAYDEN,
Attorneys for Defendant, 408 Perkins Bldg., Tacoma, Washington.

I, E. M. Hayden, one of the attorneys for the defendant in the above-entitled action, do hereby certify that in my opinion the foregoing demurrers is well taken in point of law.

ELMER M. HAYDEN.

[Endorsed]: "Filed U. S. District Court, Western District of Washington. Oct. 4, 1912. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy." [5]

In the United States District Court, for the Western District of Washington, at Tacoma, on the 15th day of October, A. D. 1912, Before the Honorable EDWARD E. CUSHMAN, Judge of the United States District Court, among others the following proceedings were had:

No. 1192.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. W. LUEDERS,

Defendant.

Arraignment and Plea of "Not Guilty."

The above-named defendant coming into open court at this time, in his own proper person, for arraignment under the indictment heretofore returned against him, being interrogated as to his true name, he answered that his true name is as in the said indictment stated, and the reading of said indictment being waived, being interrogated as to his plea, he answered that he was not guilty as charged in the said indictment. Whereupon said cause was set for trial for December 17th, 1912. [6]

In the District Court of the United States for the Western District of Washington, Southern Division.

No. 1192.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. W. LUEDERS,

Defendant.

Order Overruling Demurrer and Directing Plaintiff to Furnish Defendant With a Bill of Particulars.

This cause came on to be heard upon the demurrer of the defendant to the indictment, and the Court having heard the arguments of counsel, and being fully advised in the premises,—

IT IS ORDERED, That said demurrer be, and the same is hereby overruled; AND

IT IS FURTHER ORDERED, That the plaintiff furnish the defendant with a bill of particulars showing the manner of the concealment of the assets alleged in the indictment, at least ten (10) days before the trial of the above-entitled cause.

Done in open court this 15th day of October, 1912.

EDWARD E. CUSHMAN,

Judge.

To the above order overruling the demurrer, the defendant excepts, which exception is hereby allowed.

EDWARD E. CUSHMAN,

Judge. [7]

[Endorsed]: "Filed U. S. District Court, Western District of Washington. Oct. 15, 1912. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy." [8]

United States District Court, Western District of Washington, Southern Division.

November Term, 1912.

No. 1192.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. W. LUEDERS,

Defendant.

Bill of Particulars.

Comes now the above-named plaintiff, by B. W. Coiner, United States Attorney, and pursuant to order of Court heretofore entered herein, furnishing said defendant this Bill of Particulars herein, says:

That the manner of concealment of the assets referred to in the indictment herein is as follows:

That the said defendant having bought certain property in the town of Winlock, in the State of Washington, commonly known as the "St. James Hotel property," from one Carl Buege, did take the title to said property in the name of Mrs. L. W. Reinhardt without any consideration moving to said Mrs. Reinhardt therefor; that thereafter said defendant did procure the said Mrs. L. W. Reinhardt, without any consideration therefor, to transfer said property by deed to one Maud E. Everitt, and that said Maud E. Everitt did thereafter trade said property for the

following described property situated in the State of Oregon, to wit:

The east half of the northeast quarter (E. ½ NE. ¼) of section twenty-seven (27), township three (3) south, range twenty-five (25) east;

The north half (N. ½), the northeast quarter of the southwest quarter (NE. ¼ SW. ¼), and the north half of the southeast quarter (N. ½ SE. ¼), and the [9] southeast quarter of the southeast quarter (SE. ¼ SE. ¼); all in section twenty-six (26) township three (3) south, range twenty-five (25) east;

The south half (S. ½) and the south half of the north half (S. ½ N. ½) of section twenty-five (25), township three (3) south, range twenty-five (25) east;

The north half of the north half (N. ½ N. ½) of section thirty-six (36), township three (3) south, range twenty-five (25) east;

The west half of the northeast quarter (W. ½ NE. ¼) section thirty-five (35), township three (3) south, range twenty-five (25) east;

The southwest quarter of the northwest quarter (SW. ¼ NW. ¼) of section thirty (30), township three (3) south, range twenty-six (26) east;

The northwest quarter of the southwest quarter (NW. ¼ SW. ¼) of section thirty (30), township three (3) south, range twenty-six (26) east.

with the intent and purpose on the part of him, the said defendant, to conceal all of the said property

from the trustee in bankruptcy mentioned in the indictment herein.

B. W. COINER,
United States Attorney.

[Endorsed]: "Filed U. S. District Court, Western District of Washington. Dec. 6, 1912. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy."

We hereby acknowledge service of the foregoing Bill of Particulars, and the receipt of a true copy thereof, this 30th day of November, 1912.

HAYDEN & LANGHORNE,
Attorneys for Defendant. [10]

[Minutes of Trial.]

In the United States District Court, for the Western District of Washington, at Tacoma, on the 17th day of December, A. D. 1912, before the Honorable EDWARD E. CUSHMAN, Judge of the United States District Court, among others, the following proceedings were had:

No. 1192.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

A. W. LUEDERS,
Defendant.

RECORD OF TRIAL.

This cause coming on regularly for trial at this time, the defendant appearing in his own proper person and by his attorney, M. A. Langhorne, Es-

quire, and the plaintiff appearing by its attorney, C. F. Riddell, Esquire, a jury having been ordered, the following named persons answered to their names, and were sworn, examined and empanelled to try said cause:

William W. Brown.	J. H. Price.
Fred D. Marr.	M. Carlson.
James Callahan.	T. O. Hendricks.
J. S. Kinnaman.	Frank Morgan.
P. T. McGraw.	B. Kinnaman.
Charles Gouty.	Bert L. Austin.

Whereupon the trial regularly proceeded with the introduction of evidence, oral and documentary, on the part of the plaintiff and defendant, the following witnesses testifying on behalf of the Government:

F. M. Harshberger.	P. E. Alvord.
J. M. Phelps.	Helen King.
Carl Buege.	Dr. O. M. Sullivan.
Mrs. Anna Reinhardt	Wm. S. Swaggart.
J. A. Veness.	A. W. Shelly.
Mrs. Nellie Shelly.	N. E. Winnard.

and the following witnesses testifying on behalf of the [11] defendant, A. W. Lueders, whereupon the hour of adjournment having been reached, the jury was cautioned by the Court and permitted to separate until the next incoming court. [12]

In the United States District Court, for the Western District of Washington, at Tacoma, on the 18th day of December, A. D. 1912, before the Honorable EDWARD E. CUSHMAN, Judge of the United States District Court, among others, the following proceedings were had:

No. 1192.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. W. LUEDERS,

Defendant.

RECORD OF TRIAL (VERDICT).

This cause coming on at this time for further trial, the plaintiff appearing by its attorney, C. F Riddell, Esquire, and the defendant appearing in Court in his own proper person and by his attorney, M. A. Langhorne, Esquire, the calling of the jury being waived, it appearing that all persons were present in their proper places, the trial regularly proceeded by the introduction of evidence, oral and documentary on the part of the plaintiff and defendant, the following witnesses testifying for the plaintiff: A. S. Hoonan, Clyde L. Philliber, J. A. Cross, and the following witnesses testifying for the defendant: W. H. Kenoyer, George P. Wall, Mrs. Maude Lueders, whereupon at the conclusion of the evidence and the arguments of counsel, the jury was charged by the Court, and retired (at 3:45 P. M.) in the custody of a sworn bailiff for deliberation upon their verdict.

And thereafter, at 8:10 P. M., said jury returned into open court, returned by their foreman, and in the presence of the other jurors, the following verdict, which **[13]** was ordered filed as the verdict in this case:

"We, the jury in the above-entitled case, find the

defendant A. W. Lueders guilty as charged in the indictment therein filed.

J. H. PRICE,
Foreman." **[14]**

In the District Court of the United States for the Western District of Washington, Southern Division.

No. 1192.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

A. W. LUEDERS,
Defendant.

Verdict.

We, the jury in the above-entitled cause, find the defendant, A. W. Lueders, guilty as charged in the indictment therein filed.

J. H. PRICE,
Foreman.

[Endorsed]: "Filed U. S. District Court, Western District of Washington. Dec. 18, 1912. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy." **[15]**

In the District Court of the United States for the Western District of Washington, Southern Division.

No. 1192.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

A. W. LUEDERS,
Defendant.

Motion for a New Trial.

Now comes the defendant in the above-entitled case and petitions and moves the Court to set aside the verdict of the jury rendered in this action and to grant a new trial upon the following grounds:

I.

Error of law occurring at the time of the trial and duly excepted to by the defendant.

II.

And especially does the defendant assign error of law in the admission of the testimony of John A. Cross, the said Cross being permitted to read certain testimony given by the defendant Lueders in the former proceeding from the typewritten copy of the same, without being able to testify that he had any independent recollection of the testimony so given by the said defendant Lueders in that proceeding.

III.

That the evidence is insufficient to justify the verdict of the jury. That the evidence is insufficient in that it does not show that any demand was ever made upon the [16] defendant to surrender to the trustee in bankruptcy the property described in the indictment, nor does the evidence show that the defendant knowingly, wilfully or fraudulently concealed the property described in the indictment from the trustee in bankruptcy.

This motion is made on the files and records of this action and on the minutes of the Court, including the notes of the evidence taken by the reporter at the time, and upon all the testimony and

all the rulings made and excepted to during the progress of the trial, and upon the pleadings on file in the office of the clerk of this court.

HAYDEN & LANGHORNE,

Atorneys for Defendant, 408 Perkins Bldg., Tacoma, Washington.

[Endorsed]: "Filed U. S. District Court, Western District of Washington. Dec. 19, 1912. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy." **[17]**

In the District Court of the United States, Western District of Washington, Southern Division.

No. 1192.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. W. LUEDERS,

Defendant.

Order Overruling Motion for a New Trial.

The above-entitled cause coming on duly and regularly for hearing on the 30th day of December, 1912, on the motion of the defendant for a new trial herein,

IT IS HEREBY ORDERED that said motion be, and the same is hereby, overruled. To the entry of this order, the defendant duly excepted and his exception was entered and allowed.

IT IS FURTHER ORDERED that this order be entered to complete the records in the above-entitled cause as of the date December 30, 1912, and this

order hereby is entered nunc pro tunc.

DONE IN OPEN COURT this 10th day of February, 1913.

EDWARD E. CUSHMAN,
District Judge.

[Endorsed]: "Filed U. S. District Court, Western District of Washington. Feb. 10, 1913. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy." **[18]**

In the United States District Court, for the Western District of Washington, at Tacoma, on the 30th day of December, A. D. 1912, before the Honorable EDWARD E. CUSHMAN, Judge of the United States District Court, among others, the following proceedings were had:

No. 1192.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

A. W. LUEDERS,
Defendant.

Judgment and Sentence.

Comes now on this 30th day of December, A. D. 1912, the said defendant, A. W. Lueders, into open court for sentence, and being informed by the Court of the indictment herein against him, and of his conviction of record herein, he is asked by the Court whether he has any legal cause to show why the sentence of this Court should not be pronounced and judgment had against him at this time, he nothing

says save as he before hath said.

Wherefore, by reason of the law and the premises, it is ordered by the Court that the said defendant, A. W. Lueders, be punished by being imprisoned in the County Jail of Pierce County, Tacoma, Washington, or in such other place as may hereafter be provided for the imprisonment of offenders against the laws of the United States, for a term of nine months.

On motion of the attorney for defendant, the Court orders that defendant may go on his present bond until Tuesday, December 31, 1912, at 4 P. M., within which time defendant shall present a duly executed bond in the sum of $2,000 for approval by the Court. [19]

[Notice of Preparation and Service of Bill of Exceptions.]

In the District Court of the United States for the Western District of Washington, Southern Division.

No. 1192.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. W. LUEDERS,

Defendant.

To B. W. COINER, United States District Attorney:

PLEASE TAKE NOTICE that the undersigned has prepared Bill of Exceptions in the above-entitled action, original of which has been filed in the office

of the clerk of the United States District Court and a copy of which is hereby served upon you.

ELMER M. HAYDEN and
MAURICE LANGHORNE,

Attorneys for Defendant, 408 Perkins Bldg., Tacoma, Washington. **[20]**

In the District Court of the United States for the Western District of Washington, Southern Division.

No. 1192.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. W. LUEDERS,

Defendant.

Bill of Exceptions.

Now, on this 17th day of December, A. D. 1912, the above cause coming on for trial in the above-entitled court before the Honorable E. E. CUSHMAN, Presiding Judge thereof, and the jury duly empanelled therein; and

The United States of America being represented by Honorable B. W. COINER, United States Attorney, and Mr. C. F. RIDDELL, Assistant United States Attorney; and

The defendant, A. W. Lueders, being present in person and represented by his attorneys, Messrs. Hayden & Langhorne;

The following proceedings were had, to wit: **[21]**

The defendant's case having been duly stated to

(Testimony of F. M. Harshberger.)

the jury by Mr. Langhorne, Esq., and having been replied to by Mr. Riddell, Esq., on behalf of the Government, the following evidence was introduced:

[Testimony of F. M. Harshberger, for the Government.]

F. M. HARSHBERGER, a witness called for and on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

(By Mr. RIDDELL.)

I am deputy clerk, United States District Court; I identify the three papers handed me as being original papers on file in the bankruptcy proceedings of A. W. Lueders.

Mr. RIDDELL.—I offer in evidence the application for adjudication in bankruptcy, the original application.

Mr. LANGHORNE.—Objected to on the ground of privilege under the statute.

Mr. RIDDELL.—The schedules are attached to this petition, and I will ask the Court to make a ruling that the petition may be admitted in evidence, and that the Government may copy the same without the schedules, and that only the copy of the petition may go to the jury, as Plaintiff's Exhibit 1.

Mr. LANGHORNE.—I still object on the ground of privilege under the statute; no pleading in bankruptcy or paper of any kind can be offered and received in evidence at the trial of a case where a bankrupt is charged with an offense against the bankruptcy law.

(Testimony of F. M. Harshberger.)

The COURT.—Objection overruled, and the clerk will seal [22] up the schedules, and

Gentlemen of the Jury, when this paper goes out with you at the conclusion of the case, you will observe the seal of the court and not undertake to break it. It is simply the petition which is being admitted. You will not break any seal to discover what the other papers disclose. Objection overruled.

Thereupon said petition in bankruptcy was marked Plaintiff's Exhibit 1.

Mr. RIDDELL.—I now offer in evidence the order of adjudication, as being Plaintiff's Exhibit 2, and the order of reference as Plaintiff's Exhibit 3.

The COURT.—Admitted.

No cross-examination.

[Testimony of J. M. Phillips, for the Government.]

J. M. PHILLIPS, witness called for and on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

(By Mr. RIDDELL.)

I am an attorney at law. I live at Aberdeen. I know the defendant, A. W. Lueders, when I see him. I have had no official connection or dealings with him whatever. I was, however, appointed trustee in a case in which he was interested. I identify the signature on the paper shown me as that of J. E. Stewart, who is Referee in Bankruptcy. The paper above shown me is the appointment of myself as trustee.

Mr. RIDDELL.—We offer this paper in evidence

(Testimony of J. M. Phillips.)
as Plaintiff's Exhibit 4.

Mr. LANGHORNE.—We object, for the reason that it has never become an order of the Court; never been filed, [23] recorded or approved.

The COURT.—Objection overruled. Exception allowed.

A. I identify my signature appended to the paper now shown me.

Mr. RIDDELL.—We offer that in evidence as Plaintiff's Exhibit 5.

A. The paper shown me (Plaintiff's Exhibit 5) was signed February 23, 1912, or about that time. I identify identification No. 6, containing the signatures of Dr. Chamberlain and one McIntyre. I also identify the paper marked Plaintiff's Identification No. 7, containing the signature of J. E. Stewart.

Mr. RIDDELL.—I now offer in evidence Plaintiff's Exhibits 5, 6 and 7.

Mr. LANGHORNE.—I object to each of them, because they are not official records of this court, and I object especially to identification No. 6, purporting to be the bond of the trustee because it has never been approved.

The COURT.—Objection overruled and exception allowed.

Thereupon said papers are marked, respectively, Exhibits 5, 6, and 7.

Q. Mr. Phillips, in your position as trustee in bankruptcy of A. W. Lueders, what property came into your possession? A. No property at all.

Q. What property to your actual knowledge did

(Testimony of J. M. Phillips.)

the defendant own at the time the petition in bankruptcy was filed? A. None at all.

Q. None you actually knew of?

A. None I actually knew of.

Q. Did you ever come into possession as trustee, or have [24] anything to do with property known as the St. James Hotel property at Winlock?

A. No, sir; I was not aware of defendant's ownership of any real estate.

Cross-examination.

(By Mr. LANGHORNE.)

Q. You say there was no property of the bankrupt that came into your possession. Don't you know as a matter of fact that his books, his library, and his wearing apparel were set aside by the Court as exempt property? A. Yes, that is true.

[Testimony of Carl Buege, for the Government.]

CARL BUEGE, a witness called for and on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

(By Mr. RIDDELL.)

I reside at Chehalis, Lewis County, Washington. I know the defendant. I had dealings with him about 1905. I sold him a house and lot in Winlock. The property was known as the St. James Hotel property. I sold the property under written contract. I don't know where the contract is now. I haven't any copy of it. I suppose I destroyed the copy when the last payment was made. I sold him the property in question for eight hundred dollars.

(Testimony of Carl Buege.)

One hundred dollars was paid down and he paid me so much a month thereafter until the whole sum was paid. He made the last payment about the time I gave him the deed. I can't recall the date the last payment was made. [25] I was in Winchester, Grant County, Washington, and he was in Winlock. I don't know now where the deed is that I gave him. I made out two deeds to the property. I made out the first deed to Mrs. Reinhardt at his request, then afterwards he wanted me to make out a deed to someone else. I never found out who that someone else was. I signed the deed in blank and sent it to Winlock. The second deed conveyed the same identical property as the first deed.

Mr. RIDDELL.—I now offer in evidence Plaintiff's Exhibit No. 8.

The COURT.—It will be admitted.

Thereupon said paper is received in evidence and marked Plaintiff's Exhibit 8.

I contracted to sell Dr. Lueders this property some time in August, 1905. The contract was drawn up by George I. Brooks, attorney at law, who then lived at Winlock but now in Portland, Oregon. Dr. Lueders finished paying for it in 1907, and I executed the first deed some time in August of that year.

[Testimony of Mrs. Anna Reinhart, for the Government.]

Mrs. ANNA REINHART, a witness called for and on behalf of the Government, being duly sworn, testified as follows:

(Testimony of Mrs. Anna Reinhart.)

Direct Examination.

(By Mr. RIDDELL.)

My name is Anna Reinhart. I am the wife of L. W. Reinhart. I live at Oak Grove, Oregon. I know the defendant, I have known defendant for seven or eight years. He lived at Winlock when I first became acquainted with him. I never owned any property at [26] Winlock. I don't know that I ever had title to any property there. I do not know that I ever had a deed to any property there. I do not know that I ever made a deed to any property down there. I know the property at Winlock known as the St. James Hotel property. I do not know that I ever owned that property. If I ever had a deed to it, I don't know it. If I ever had a deed from Carl Buege, I don't know it. I testified before the grand jury. I do not remember what my testimony was there. I do not remember of being asked any of the questions which have just been propounded me.

Mr. LANGHORNE.—Let me examine her a minute. There is nothing to conceal here.

Mr. RIDDELL.—I would like to examine the witness, your Honor. This witness is evidently just a little frightened, and I think if I may be permitted to refresh her recollections a little bit I can straighten her out.

Mr. RIDDELL.—Do you remember, Mrs. Reinhart, when you were before the grand jury, I asked you if you had ever gotten a deed from Mr. Buege?

A. Yes, but I could not say that it was a deed. If Mr. Buege deeded this Winlock property to me, I

(Testimony of Mrs. Anna Reinhart.)

don't know it.

Q. Tell the jury what you do know about the transaction.

A. Well, I know that there was an instrument made to me but I never saw it. I don't know what it was. I have signed deeds at my husband's request, but who the grantee was I do not know. If there was a deed made to Dr. Lueders or Miss Everitt from me [27] I do not know of it. I do not now recall that fact. If there was a deed made to me of the Winlock property I did not pay anything for it. I never had any correspondence with Dr. Lueders about the matter. Neither did I ever receive any letters from him.

Mr. RIDDELL.—We offer in evidence those two copies of deeds.

Mr. LANGHORNE.—No objection.

The COURT.—They may be admitted.

Thereupon said copies of deeds are marked as Plaintiff's Exhibits 9 and 10.

Cross-examination.

(By Mr. LANGHORNE.)

My husband is a traveling man. When on his travels he often stopped at Winlock at the St. James Hotel. He was acquainted with Dr. Lueders, and they were very close friends. I understood that Dr. Lueders had placed this property in my name, but I had no personal knowledge of that fact. My husband told me that Dr. Lueders had done so. Some time afterwards my husband called upon me to execute a deed. I signed my name to it without know-

(Testimony of J. A. Veness.)

ing to whom the deed ran, or anything about the description of the property.

[Testimony of J. A. Veness, for the Government.]

J. A. VENESS, a witness called for and on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. RIDDELL.)

My name is J. A. Veness. I live in Winlock, Washington. I am a member of the J. A. Veness Lumber [28] Company. I know the defendant. I also know his present wife. I know the property down there known as the St. James Hotel property. I once loaned money on that property. It came about in this way: Dr. Lueders wanted to borrow some money on that property; I do not know whether he wanted it for himself or someone else, but when I took the mortgage it belonged to another party, and the other party signed the mortgage. Dr. Lueders negotiated the loan. I did not ask him whether the money was for himself or someone else. I never had any dealings in which that property was concerned before that time. I had furnished a little lumber before the occasion I speak of. I afterwards furnished the lumber when the hotel was built. The mortgage was taken after the lumber was furnished. He furnished me an abstract of the property which was examined by my attorney, Mr. Langhorne, and he found the title thereto was in the name of Miss Everitt. Dr. Lueders and Miss Everitt occupied the property at the time. I knew that Dr. Lueders had

(Testimony of J. A. Veness.)

a wife. At one time he wanted me to take title to the property in my own name. This was before I ever furnished lumber for any purpose. He suggested that I take a deed to it, as he was having some trouble with his first wife and wanted to protect himself. After the property was improved, I made him an offer of four thousand dollars for it. I never had any dealings with Miss Everitt in connection with the property. If she owned the property, I suppose he was her agent. [29] Dr. Lueders negotiated the loan anyway. I do not know the time Dr. Lueders and Miss Everitt were married. Once when I was in Portland Dr. Lueders told me they were married. I can't tell you whether that was two or three years ago. At the time he told me this I was on my way to either China or California. I was just trying to decide which place it was, when I met them in Portland. If I knew I could tell you exactly when he told me they were married. When Dr. Lueders asked me to take title to the property, he did not ask for any consideration. I can't say when this conversation was had, I am all at sea about it, because I do not know. However, I do know that the conversation about taking the property in my name was before the mortgage.

Q. Do you remember how or from whom the repayments on the three-thousand-dollar loan occurred?

Mr. LANGHORNE.—Were those payments accompanied by written communications?

A. I will tell you about those payments. My bookkeeper is authorized to sign checks and deposit

(Testimony of J. A. Veness.)

money, and that transaction probably went through the bank and through my office and I never saw it; I could not tell. My bookkeeper does that business and I think some of that was paid when I was away in the Orient.

Cross-examination.

(By Mr. LANGHORNE.)

When the abstract was examined, I was informed that Dr. Lueders had no record title to the property; the title stood in the name of E. Maude Everitt. I knew [30] at the time that Dr. Lueders was married and was not living with his wife. I know that was before I took the mortgage on the property that he spoke to me about taking the title in my name. At the time of this conversation the property was being used for a hospital and not for hotel purposes. It was made over into a hotel afterwards.

Redirect Examination.

(By Mr. RIDDELL.)

I do not remember what Dr. Lueders said about the nature of his family trouble.

[Testimony of P. E. Alvord, for the Government.]

P. E. ALVORD, a witness called for and on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

(By Mr. RIDDELL.)

My name is P. E. Alvord. I live in Portland, Oregon. I have lived there for about three years. I know the defendant Lueders in a business way and have had dealings with him. In April or May, 1911,

(Testimony of P. E. Alvord.)

I met Dr. Lueders and Miss Everitt together. I knew that they wished to dispose of the St. James property and I had gotten in touch with Mr. Huddlestone and Dr. Winnard in Eastern Oregon, who had some wheat land they wanted to exchange for property in or near Portland. I got these parties together, looking to an exchange of the property, and Dr. Lueders said he would go over and look at the property in Eastern Oregon, and he did so and thereafter an arrangement was made, subject to the acceptance of Miss Everitt, and papers [31] were drawn up by an attorney and signed by the parties at Heppner, Oregon, and the next day I returned with Dr. Lueders to Aberdeen and saw Miss Everitt, and the matter was agreed to and the contract signed. Dr. Lueders never told me anything about his marriage relations with Miss Everitt. He told me, however, about a year ago, that they were married. There was some difference between the value of the two properties and the sum of fourteen or fifteen hundred dollars in case was paid to the Oregon parties. I got that money from Miss Everitt. It was in cash. I have been in the Hotel St. James at Winlock. Last time I stopped there a man by the name of Williams was running the hotel. Before that Dr. Lueders and Miss Everitt were occupying the same when I first stopped there, and afterwards the hotel was leased and changed tenants several times. I do not know what Dr. Lueders made in his profession. He told me he was doing very well. I think he told me he was making four or five hundred a month.

(Testimony of P. E. Alvord.)

This conversation occurred some time after this deal was made. The value of the Oregon property was twenty-five or twenty-six thousand dollars, upon which there was a mortgage of twelve or thirteen thousand dollars. The St. James property was valued at eleven thousand dollars.

Mr. RIDDELL.—I offer in evidence certified copy of the deed.

Mr. LANGHORNE.—No objection.

Thereupon said certified copy of deed is received in evidence and marked as Plaintiff's Exhibit 11. [32]

Cross-examination.

(By Mr. LANGHORNE.)

I first became acquainted with the St. James Hotel property in Winlock four or five years ago. At that time it was just being converted into a hotel At that time Miss Everitt spoke to me about wishing to get her money out of the hotel. She was the first person that ever approached me about selling the property. The value put on the lands in Oregon was rather arbitrary. The parties who had those lands could not carry them and the mortgage too. They took the St. James Hotel at a great big price in order to get rid of the lands they held down in Oregon.

Redirect Examination.

(By Mr. RIDDELL.)

I cannot say that I am really familiar with values in Winlock, and I think the value of the St. James Hotel property at the time of the transfer was seven or eight thousand dollars.

(Testimony of P. E. Alvord.)

Recross-examination.

(By Mr. LANGHORNE.)

I don't know what gave it that value, unless it was the cost of building and the equipment. It once rented for one hundred dollars per month. The parties that rented it went into bankruptcy.

[Testimony of Helen King, for the Government.]

HELEN KING, a witness called for and on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

(By Mr. RIDDELL.) [33]

My name is Helen King. I live in Spokane, Washington. My occupation is that of a nurse. I know the defendant. I also know his wife. I first met him seven or eight years ago at Walla Walla. I went to Winlock in 1905 or 1906. Dr. Lueders was there at that time. I remained there two years. I left some time in 1907. Miss Everitt came to Winlock while I was there. She came to take up nursing. She was not a nurse at the time. She came to learn. I suppose she was to receive a salary of ten dollars a month, which is the average pay of nurses in training. I do not know what property, if any, she had when she came there. If she had any I do not know it. I do not know how long Miss Everitt had been there before the title of the property was placed in her name. I think she came there in 1906, about the first part of the year, but I am not positive. It is such a long time since I worked there I have forgotten dates. I had a conversation with Dr. Lueders

(Testimony of Helen King.)

about the title of the property about one year after I left there. He told me he had the property transferred to Mrs. Reinhardt. He never told me anything else about it at that time or any other time. When I was there this property was known as the Winlock Hospital. It was built while I was there. I do not know anything about the cost of it. I never had any conversation with Dr. Lueders relative to the cost. I know that [34] Dr. Lueders was paying for it, but I don't know how much he paid. He made payments to Mr. Buege, the man he bought it from and to Mr. Veness for lumber. I don't know how much he paid for it. There were some fifteen or sixteen rooms in the hospital. I do not know what Dr. Lueders was making at this time. He had a very good practice. He told me he was making money, but never said just how much.

Cross-examination.

(By Mr. LANGHORNE.)

I identify my signature to the letter handed me. I wrote that letter.

Thereupon said letter is received in evidence by the Court and marked as Defendant's Exhibit "A."

Q. In regard to the payments for lumber made to Mr. Veness. Was that for lumber used to fix the old building up into a hospital?

A. I do not know anything about the remodeling of the hospital into a hotel. I was not there. These payments for lumber were made long before Miss Everitt came to Winlock.

[Testimony of J. W. Phillips, for the Government (Recalled).]

J. W. PHILLIPS, being recalled, testified as follows:

Direct Examination.

(By Mr. RIDDELL.)

I identify my signature to the letter handed me, I mailed the original to the defendant.

Mr. RIDDELL.—We offer it in evidence as Plaintiff's Exhibit 14. **[35]**

The COURT.—It will be admitted as Plaintiff's Exhibit 14.

[Testimony of Dr. O. N. Sullivan, for the Government.]

Dr. O. N. SULLIVAN, a witness called for and on behalf of the Government, testified as follows:

Direct Examination.

(By Mr. RIDDELL.)

I live at Aberdeen. I know defendant Lueders. In 1909 or 1910 I had a conversation with him in Aberdeen about the St. James Hotel property in Winlock. He told me he had rented it and was getting one hundred dollars a month for it.

[Testimony of William S. Swaggart, for the Government.]

WILLIAM S. SWAGGART, a witness called for and on behalf of the Government, being duly sworn, testified as follows:

(Testimony of William S. Swaggart.)

Direct Examination.

(By Mr. RIDDELL.)

My name is William S. Swaggart. I am proprietor of the Country Club located just out of Portland. I know the defendant. I have had some transactions with him with reference to the St. James Hotel property in Winlock. I had a friend who went to Winlock and secured a lease to the St. James Hotel and I financed it. The name of the party was C. E. Green. Afterwards I made an arrangement to lease the hotel myself and got a five-year lease. I made the arrangement with Dr. Lueders and Miss Everitt.

Q. With whom were all of your transactions except the signing of the papers?

A. With Miss Everitt.

Q. The signing of the papers was by whom?

A. Miss Everitt signed the papers. [36]

Q. With whom were your verbal transactions?

A. Dr. Lueders.

Cross-examination.

(By Mr. LANGHORNE.)

When the transaction with reference to the lease of the hotel was closed up Dr. Lueders and Miss Everitt were together.

Redirect Examination.

(By Mr. RIDDELL.)

Q. Did you ever have any other negotiations about the hotel with Dr. Leuders that were not in her presence?

A. None whatever that I know of. That was the

(Testimony of A. W. Shelly.)

only time. We arranged the lease and he sent it from Aberdeen to sign, or she sent it to me, rather; her name was signed to it.

[Testimony of A. W. Shelly, for the Goverment.]

A. W. SHELLY, a witness called for and on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

(By Mr. RIDDELL.)

My name is A. W. Shelly. I live at Moclips. I run a drug store down there. I know the defendant. He has visited with me. I became acquainted with him about 1909, in October or November. When he visited me there was a lady with him, I took to be his wife. He introduced her as his wife; that is all I know. Some time during his visit, if I remember rightly, he said he had a hotel or hospital in Winlock—at one time a hospital but had turned it into a hotel. He talked of it as his hotel or hospital. I don't know whether he came right out and [37] said it was his own or not, but to the best of my recollection he talked about his hotel; that is all I know. He referred to it as his hotel. I do not remember whether anyone else was present.

Cross-examination.

I do not have any distinct recollection as to the date of this conversation. I think it was in 1909. I am not certain.

[Testimony of Mrs. Nellie Shelly, for the Government.]

Mrs. NELLIE SHELLY, a witness called for and on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

(By Mr. RIDDELL.)

Q. What is your full name?

A. Mrs. Nellie Shelly.

Q. You are the wife of Mr. Shelly, who just left the stand? A. Yes.

Q. You know Dr. Lueders? A. Yes, sir.

Q. Did you ever hear Dr. Lueders speak of the St. James Hotel property there in Winlock?

A. Yes, sir.

Q. Did you ever hear him refer to it as to whose it was?

A. Why, I understood it was his. He said he had a hotel.

Mr. LANGHORNE.—I moved to strike the answer out.

The COURT.—The answer may be stricken and the jury instructed to disregard it. You were asked to state what he said about it.

A. I heard him say he had a hotel up at Winlock.

Q. When did he say that? [38]

A. Oh, about three years ago, I think, down at Aberdeen.

Q. That was when he was living at Aberdeen?

A. Yes, sir. When he first came to Aberdeen.

Q. Do you remember when he came there?

(Testimony of Mrs. Nellie Shelly.)

A. Yes.

Q. When was it?

A. It was around Thanksgiving time. I know he took dinner with us.

Q. In what year? A. 1909, I guess it was.

Q. Do you remember how many times you heard him speak about it?

A. I just heard him speak about it in the drug-store, about he leased his hotel and somebody went away and left a lot of bills and he had to see about it; he was going up one time to see about it.

Q. What?

A. He was going up to Winlock to see about some parties that went out and left a lot of bills on it or something to that effect.

Cross-examination.

(By Mr. LANGHORNE.)

Q. At the time this conversation was had he was going to Winlock or going to Tacoma to see about collecting some bills that was due him from the parties that were running the hotel, wasn't he?

A. I understood it was at Winlock, he was going to Winlock.

Q. Anyway, at the time this conversation was had there was some trouble about it, wasn't it? [39]

A. Yes, sir, that is what I understood.

Q. There was some trouble from the renting of the hotel, wasn't it?

A. Yes, he was going to collect some rent, or they would not pay the rent or something.

Q. Now, what date did you say this was?

(Testimony of Mrs. Nellie Shelly.)

A. The conversation?

Q. Yes.

A. Oh, I could not say that, what date it was. I never noticed as to that.

Q. Did he say anything about furniture of the hotel?

A. I understood it was furnished; he spoke about it being furnished.

Q. He spoke about the furniture too, didn't he?

A. Yes, it was furnished.

Q. You never had any reason to pay any particular attention to this conversation, did you?

A. No, not much, only in his talk of course he drew my attention.

Q. Never made any impression upon you at the time, Mrs. Shelly?

A. No, I did not bother about it.

Q. Isn't it possible he spoke to you about being the owner of the furniture in the hotel—speaking of the hotel might it not be possible that he spoke to you of being the owner of the furniture and that you understood him as being the owner of the hotel?

A. Yes, I understood he was owner of the hotel; at least he said he was. [40]

Q. What did he say?

A. He said it was furnished and the people skipped out.

Q. Did he say to you "I am the owner of the hotel in Winlock," did he say that? A. Yes.

Q. Those identical words?

A. Yes, he said he owned the hotel—he owned the

(Testimony of Mrs. Nellie Shelly.)

hotel up at Winlock; it used to be a hospital.

Q. He says, "I am the owner." Did he use those words?

A. Why, I do not know; yes, I suppose he was the owner.

Q. You can recall the identical words years afterwards?

A. Why, I understood he was the owner of it; he spoke about that.

Q. I do not want what you understood, but I want to know did he say, use these words, "I am the owner"?

A. Yes, he said he owned the hotel; yes. He owned the hotel at Winlock.

Q. You just understood from the conversation he was the owner?

A. Why he owned the hotel at Winlock.

Q. Do you know that he went away shortly after that conversation?

A. He was to go away next morning, leave home.

Q. Miss Everett go with him?

A. I do not know anything about that.

Q. Was this in March, 1910, that this conversation occurred? A. It might have been about that time.

Q. Anyway, he went away the next morning?

A. Yes; he spoke about going away; he had to go away in the morning.

(Witness excused.) [41]

[Testimony of Dr. N. E. Winnard, for the Government.]

Dr. N. E. WINNARD, a witness called for and on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

(By Mr. RIDDELL.)

My name is N. E. Winnard. I am physician and surgeon. I live at Heppner, Oregon. I have been there since January 1st, 1905. Land around Heppner is used for farming and grazing. I know the defendant Lueders. I once owned property there and transferred some property through negotiations with him. I learned the St. James Hotel property was for trade for farm land and I looked the property over and Dr. Lueders came to Heppner and looked the ranch over and we made a trade, trading the ranch for the hotel property. I figured the St. James Hotel property at a value of eleven thousand dollars. In the exchange of the farm land for the hotel property, sixteen hundred dollars passed hands. The money came through B. E. Alvord, the agent. This was in May, 1911. I recognize the paper handed me. The signatures attached thereto are those of myself and my wife. It is a contract for the exchange. It was entered into between N. E. Winnard, party of the first part, and E. M. Everitt, party of the second part.

Mr. RIDDELL.—I will offer it in evidence. Any objection?

Mr. LANGHORNE.—Not the slightest.

(Testimony of Dr. N. E. Winnard.)

Thereupon said contract is received in evidence and marked as Plaintiff's Exhibit 15.

Q. By whom were all these negotiations conducted? A. Dr. Lueders. [42]

Cross-examination.

(By Mr. LANGHORNE.)

P. E. Alvord was the real estate agent. He negotiated the deal. I understood from Alvord who we were to deal with so far as the title of the property in Winlock was concerned. I understood that we were to deal with Miss Everitt so far as the title to the Winlock property was concerned. Dr. Lueders placed a value of eleven thousand dollars on the property in Winlock. I did not consider it worth that much. The true reason of making the trade was to get rid of the land in Oregon, as we were unable to carry the heavy mortgage of thirteen thousand dollars thereon; at least, that was one of the reasons. I suppose the Winlock property was worth about eight thousand dollars, although I never bought or sold any other property there and do not know anything about values at that place. I represented Huddlestone in the trade. Dr. Lueders represented Miss Everitt.

Mr. RIDDELL.—That closes the Government's case, except two witnesses that will not be able to get here until tomorrow morning.

The COURT.—Mr. Langhorne, do you object to proceeding, letting that evidence be introduced out of order?

Mr. LANGHORNE.—No, we do not object to such

(Testimony of F. M. Harshberger.)

procedure. The Government can put the witnesses on the stand when they come in.

The COURT.—Then, without prejudice to the Government introducing the testimony when it arrives, you may open your case, Mr. Langhorne. [43]

[Testimony of F. M. Harshberger, for the Defendant, (Recalled).]

F. M. HARSHBERGER, being recalled as a witness in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. LANGHORNE.)

I recognize Defendant's Identification "B" as being the original petition in bankruptcy entitled In the Matter of Louis H. M. Williams, Bankrupt, No. 762, petition on the part of Dr. Lueders, E. Maude Everitt and John B. Sorenson, asking to have Williams, who was at that time lessee of the Winlock Hotel, declared bankrupt. The petition is dated March 12, 1910, and filed in this court March 14, 1910.

Which said petition was offered in evidence over the objection of Mr. Riddell, and marked Defendant's Exhibit "B."

[Testimony of A. W. Lueders, in His Own Behalf.]

A. W. LUEDERS, the defendant, being duly sworn, testified in his own behalf as follows:

Direct Examination.

(By Mr. LANGHORNE.)

My name is A. W. Lueders. I am a physician and surgeon. I am 46 years of age. I have lived in

(Testimony of A. W. Lueders.)

the State of Washington since 1900. I have been married twice. Was first married at Milwaukee, Wisconsin. First located at Walla Walla after coming to Washington. I lived there about three and one-half years. From there I moved to Tenino, residing there seven months. From Tenino I went to Winlock, Washington. I owned no real estate while at Walla Walla excepting an equity in a timber claim valued at about three hundred and fifty dollars. When I left Walla Walla my first wife went with me, but left me at Seattle and went east. [44] I don't know where she went. I afterwards learned that she was living in Milwaukee. I was afterwards served with a summons in a divorce suit. The paper recited that she was living in Milwaukee. When I went to Winlock I started a small hospital. I bought the real estate from Carl Buege. The purchase price was in the neighborhood of eight or nine hundred dollars. The building situated thereon was nothing more or less than a shack. It was not worth very much. I bought the land under contract. When I finished payments under the contract, I had Buege make the deed to Mrs. Reinhardt. The reason that I did so, I knew that in owning and disposing of property it would naturally require the signature of my wife, and her being in the east and I here, I did not think it best to take title in my own name. The Reinhardts are very good friends of mine and I thought that it would be a safe thing to take the deed in her name. Before having Buege make the deed to Mrs. Reinhardt I spoke to Mr. Veness about tak-

(Testimony of A. W. Lueders.)

ing deed in his own name. Some improvements were made on the property before the deed passed from Buege to Mrs. Reinhardt. The first improvement was to make the old building over so that it could be used for hospital purposes. The lumber bill probably amounted to five hundred dollars. Some three years after the hospital was remodeled and made over into a hotel. Miss Everitt came to Winlock in 1906. She was a nurse at that time. She had been there some five or six months when I sold her the property that I had bought from Buege. She paid me eight hundred dollars for the [45] same and assumed a lumber bill due to the J. A. Veness Lumber Company. The reason I sold her the property I wanted to leave town. After she bought the building which was at that time being used for hospital purposes, we made an arrangement whereby I was to look after the patients in the hospital and she would do the nursing and collect for her services and for hospital dues. When she first came there I paid her twenty-five dollars per month. Afterwards her salary was raised from time to time until it amounted to one hundred and twenty-five dollars per month. I spoke to Veness about loaning Miss Everitt three thousand dollars for the purpose of remodeling the hospital into a hotel. I told him at the time that Miss Everitt owned the property. After the hotel was finished Miss Everitt ran the same but I helped her. I owned the furniture in the hotel. Afterwards she leased the hotel to one Williams and I sold the furniture to him for the sum

(Testimony of A. W. Lueders.)

of twenty-five hundred dollars, of which amount only five hundred dollars was ever paid. Williams afterwards left the state. Miss Everitt and myself were married in January, 1912. We were married at Kalama, Cowlitz County, Washington. I went to Aberdeen in 1909. Miss Everitt went also. It was her duty to look after the office in my absence, attend to the compounding of drugs, and filling prescriptions and doing such other work as a nurse generally does in a doctor's office. When I left Winlock I did not owe any one. I owed no one when I sold the Winlock property to Miss Everitt in 1906 excepting a small bill to the Veness [46] Lumber Company which she assumed and afterwards paid and which was part of the consideration for the sale of the property. After I went to Aberdeen I paid Miss Everitt the sum of one hundred and fifty dollars per month for her services. Four months prior to the filing of my petition in bankruptcy, I owed a note for four hundred and fifty dollars to one Clancy. I owed Miss Everitt about four hundred and fifty dollars, and some other smaller bills. One John Forsgrim obtained a judgment for five thousand dollars against me by default, and that is what caused bankruptcy proceedings. I heard the statement of Mr. and Mrs. Shelly to the effect that I told them that I owned a hotel in Winlock. I did not tell them anything of the kind. I told them that I owned the furniture in a hotel in Winlock and that the party who had bought it did not pay for it and had left the state and I had to go down there and see what I could do to protect

(Testimony of A. W. Lueders.)

myself. When the proposition of Miss Everitt trading the Winlock property for lands in Oregon came up, I went to Oregon for her to look over that property. Some time prior thereto, Miss Everitt and I had an understanding that we were to be married as soon as I was legally free so to do. At the time I had Buege make the deed to Mrs. Reinhardt of the property I had purchased from him, I had no idea of defrauding any one. It was not made for the purpose of concealment. It was only made for the purpose that I have heretofore indicated.

Mr. RIDDELL.—The witnesses of whom I spoke yesterday are [47] now in court and I would like to put them on the stand.

The COURT.—All right, the defense will be interrupted long enough to allow you to put in the remainder of the testimony.

[Testimony of A. S. Hoonan, for the Government.]

A. S. HOONAN, a witness called for and on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

(By Mr. RIDDELL.)

My name is A. S. Hoonan. I am now Assistant Cashier of the United States National Bank at Aberdeen, Washington. I was Teller in that bank on February 11, 1911. I identify my signature to identification No. 16.

Q. Tell the jury the circumstances of the execution of that paper.

Mr. LANGHORNE.—To that I object as abso-

(Testimony of A. S. Hoonan.)

lutely immaterial. The defendant is not charged here with secreting or disposing of any money, or attempting to conceal the same from his trustee. The only charge contained in the indictment is that he concealed real estate described therein. The testimony is therefore incompetent, irrelevant and immaterial.

The COURT.—The only charge in the indictment is the secreting of the particular real estate described. Unless the jury believes the transaction, about which this inquiry is made, concerns the matter charged in the indictment, you will disregard his testimony. (Discussion.)

The COURT.—The objection is overruled, and exception allowed.

Q. Tell the jury the circumstances under which that draft was purchased.

Mr. LANGHORNE.—I renew my objection. [48]

The COURT.—Objection overruled.

A. As I recall it, Mr. Lueders came into the bank.

Q. That is this defendant?

A. Yes, sir, and requested currency, and I cannot tell you the exact amount he asked for, or if he asked for any amount, and that he was told by myself I was not in possession of that amount of currency. Whereupon he asked for a draft and the usual questions, of course, were asked about where he wanted to use it and in whose favor, and the draft was written out and sold to Mr. Lueders.

Q. And this is the draft? A. This is the draft.

(Testimony of Clyde L. Philliber.)

Mr. RIDDELL.—We will offer that in evidence as Plaintiff's Exhibit 16.

Mr. LANGHORNE.—Objected to for the reasons heretofore stated.

The COURT.—It will be admitted.

Thereupon said draft was marked as Plaintiff's Exhibit 16.

[Testimony of Clyde L. Philliber, for the Government.]

CLYDE L. PHILLIBER, a witness called for and on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

(By Mr. RIDDELL.)

My name is Clyde L. Philliber. I am a clerk in the bank of Ladd & Tilton, Portland, Oregon. Have been in that position since July, 1907. That is my signature. (Referring to Plaintiff's Identification No. 17.) The other signature is that of Walter M. Cook, Assistant Cashier of the bank. I have but a faint recollection [49] of the circumstances pertaining to the execution of that paper. On February 13, 1911, Mr. Cook came to my window with a draft drawn from the United States National Bank at Aberdeen on the First National Bank of Portland, requesting that I give a certificate of deposit to E. M. Everitt. As I remember now, I was very busy at the time, and Mr. Cook, the Assistant Cashier, wrote the certificate and had me sign it, and he counter-signed it. I cannot say that I recognize Plaintiff's Exhibit 16, but it has my stamp upon it. It

(Testimony of Clyde L. Philliber.)

seems to have passed through my department in payment of this check here. (Plaintiff's Identification 17.)

Mr. LANGHORNE.—To all of this we object as incompetent, immaterial and irrelevant, and for the reasons given in opposition to the admission of the testimony of Mr. Hoonan.

The COURT.—Objection overruled and exception allowed.

Mr. RIDDELL.—We offer in evidence paper marked as Plaintiff's Identification 17.

Mr. LANGHORNE.—I object for the reasons heretofore stated.

The COURT.—It will be admitted.

[Testimony of A. W. Lueders, Recalled in His Own Behalf.]

A. W. LUEDERS, being recalled, continues his testimony as follows:

Direct Examination.

(By Mr. LANGHORNE.)

In regard to the Clancy note for four hundred and fifty dollars. That was contracted in February, 1911. I did not mean to testify that it has been contracted four full months prior to the filing of [50] petition in bankruptcy. I identify paper handed me as being certificate of marriage between myself and Miss Everitt. We were married on the 22d day of January, 1912.

Cross-examination.

(By Mr. RIDDELL.)

The only property I owned when in Walla Walla

(Testimony of A. W. Lueders.)

was an equity in a timber claim. I took up the timber claim, borrowed the money to pay for it, and when I speak of the equity I meant what I subsequently got out of it over and above what I had to pay back to the party I borrowed the money from. Yes, I bought the property in Winlock from Mr. Buege and paid him one hundred dollars down and the balance on long time installments. I met the payments with my own money. After all payments were made I took title in the name of Mrs. Reinhardt. Some time thereafter, I cannot remember the particular date, I sold the property to Miss Everitt. Before selling it to her I made some few improvements on it. The lumber bill amounted to four or five hundred dollars. Carpenter bill probably amounted to three hundred dollars. The total expense of remodeling was probably eight hundred dollars. Miss Everitt paid me eight hundred dollars and assumed the lumber bill; Miss Everitt came to Winlock in 1905 or 1906; in 1906, I think. When Miss Everitt first started in I paid her twenty-five dollars per month. Every three or four months I raised her twenty-five dollars. About one year thereafter, one hundred dollars a month. Miss Everitt was with me four years in Winlock before going to Aberdeen. We went to Aberdeen in October or [51] November, 1909. I went into bankruptcy on March 31, 1911. We came to Winlock in the year 1906 and I entered into bankruptcy in March, 1911. Mr. and Mrs. Shelly are friends of mine; that is, we have always been friendly. Yes,

(Testimony of A. W. Lueders.)

I stated on the stand yesterday that I had a satisfactory settlement with my wife. I paid her two thousand dollars. I borrowed the money from Miss Everitt. My former wife and myself had a satisfactory arrangement and she received that amount. Yes, I have a receipt for the two thousand dollars.

Mr. LANGHORNE.—(Interrupting.) I will offer it in evidence now, if your Honor pleases. It is in the form of certified copy of decree of divorce.

Mr. RIDDELL.—No objection.

Thereupon said decree of divorce is received in evidence and marked as Defendant's Exhibit "D."

At the time the decree of divorce was entered I did not own any real estate. I don't know why the decree of divorce mentions "both real and personal property." I presume as a matter of form. That is all I know about it. When I was in Aberdeen my practice varied considerably. I averaged about three hundred dollars a month. Probably about the same in Winlock. The money that was paid to my wife was paid with the twelve hundred and eight hundred dollar drafts heretofore spoken of by the Government's witnesses. It was Miss Everitt's money, the whole two thousand dollars was hers. I bought the original drafts for her. I never denied purchasing the drafts. I denied that I purchased them for myself and I deny that again. Yes, I remember having been summoned [52] on supplementary proceedings in the Forsgrim case down in Chehalis County before Judge Mason Erwin.

Q. Doctor, you were asked at that time, were you

(Testimony of A. W. Luedders.)

not, whether you had ever resided in Winlock?

A. Yes, sir.

Q. And you were asked about the property, "Have you ever accumulated any property there or ever owned any property there," and you answered you had owned some property there?

Mr. LANGHORNE.—We object to this line of examination on the ground of privilege and upon the further ground that it is not cross-examination; that it had no relevancy whatever to the issue now on trial.

The COURT.—Objection overruled and exception allowed.

A. Yes.

Q. And then, Doctor, weren't you asked this question and wasn't this your answer, "Did you ever own real estate there," and didn't you say "No, sir"?

Mr. LANGHORNE.—Objected to for the reason heretofore given.

The COURT.—Objection overruled.

A. I do not recollect. If you have got the evidence there it is probably so.

Q. And then were you not asked "Did you ever have any interest in any real estate there?" and didn't you say "No, sir"? A. I do not know.

Q. And then weren't you asked who owned the real estate upon which the hotel stood and didn't you answer "E. M. Everitt owned that property"?

A. Yes. [53]

Q. Now, you were under oath there, Doctor?

A. I presume so.

(Testimony of A. W. Lueders.)

Q. Now, tell the jury why you have sworn in this case that you did own an interest in certain real estate in Winlock and why on that occasion you swore you did not.

A. Well, if I did that I probably thought I was being asked the question "Did I own it," to which I can consistently and truthfully *said* "No." I say that to-day.

Q. Didn't I ask you a little while ago whether at the time you had paid Buege for this property and it stood in the name of Mrs. Reinhardt if you did not own it then. Don't you remember my asking you that a little while ago and don't you remember saying that you did?

A. I do not remember now. Possibly. I don't think I fully understand you.

Q. Why, Doctor, on the occasion down in the Superior Court in Chehalis County, when you were up on supplementary proceedings there and you were asked, "Did you ever have any interest in real estate there," why did you say "No, sir"?

A. I do not know as I did say it. If I did that is the way I took it and construed it, as having any interest. I had no interest in it any more than the furniture, that is all.

Q. At the time this property stood in the name of Mrs. Reinhardt you owned it, didn't you?

A. Yes.

Q. Then when they used this language, "Did you ever have any interest in any real estate there," you understood that language to mean, "Have you any

(Testimony of A. W. Lueders.)

interest in any now"? [54]

A. Possibly I did; yes.

Q. And weren't you asked at that time, "Do you recall the circumstances of buying a twelve hundred dollar draft February 8th in the name of E. M. Everitt"? and didn't you answer, "I bought no such draft as that"? A. Yes.

Q. And weren't you asked, "You swear you never bought such a draft as that"? and you said, "No, sir"? A. Yes, that is what I said.

Q. And they asked you, "From the United States National Bank"? and you said—

A. Yes, sir. Yes, I testified that I once owned some furniture in a hotel at Winlock. The man I sold it to went bankrupt. I threw him into bankruptcy. After he was thrown into bankruptcy Mr. Benner, of Tacoma, was appointed trustee, and he sold the furniture to Miss Everitt. She paid eight hundred dollars for it. What was my reason for selling the St. James Hotel property to Miss Everitt? I know of no reason why I should not. I lost interest in it and wanted to get away, and sold out to her.

[Testimony of W. H. Kenoyer, for the Defendant.]

W. H. KENOYER, a witness called for and on behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. LANGHORNE.)

My name is W. H. Kenoyer. I live at Chehalis, Washington. I have lived in Lewis County since 1888, and have been continuously in the real estate and insurance business. I once lived at Winlock. I

(Testimony of W. H. Kenoyer.)

am well acquainted with real [55] estate values in that town, and in other parts of the county. I know the St. James Hotel property. Its market value has never been in excess of three thousand dollars. That was its highest market value during the whole of the year 1911. I know the reputation of Dr. Lueders for honesty and integrity while I lived in Winlock. It was good.

[Testimony of George P. Wall, for the Defendant.]

GEORGE P. WALL, a witness sworn on behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. LANGHORNE.)

My name is George P. Wall. I reside at Winlock, Washington. I have resided there since 1890, excepting that during the year 1899 I lived in Portland. I am well acquainted with real estate values in Winlock. I know the St. James Hotel property. It never has had a market value in excess of thirty-five hundred dollars. I was acquainted with the reputation of Dr. Lueders for honesty and integrity while he lived in Winlock. It was good.

[Testimony of Mrs. Maude Lueders, for the Defendant.]

Mrs. MAUD LUEDERS, being duly sworn, testified as follows:

(By Mr. LANGHORNE.)

Direct Examination.

My name is Maude Lueders. I am the wife of the defendant. I came to this country from England. I came to Canada in 1904. I sailed from Liverpool

(Testimony of Mrs. Maude Lueders.)

and landed at Montreal. When I came to this country I brought fifteen hundred dollars with me. After I landed at Montreal I exchanged my English money for Canadian money. When I lived in England I followed nursing for an occupation. I worked [56] in the London Hospital. It is one of the largest hospitals in that city. I went to Winlock in April, 1906. Miss King was there when *sent* there. She left in December, 1906. When I first went to work for Dr. Lueders he paid me twenty-five dollars a month. I was working for him when he had Buege deed the property to Mrs. Reinhardt. Some time after I went there, Dr. Lueders complained a great deal about not desiring to live at Winlock and wanted to sell out. I thought I could run the hospital to advantage and so I offered to buy and did afterwards buy it from him. At that time there was no affection between Dr. Lueders and myself whatever. The transaction was a purely business transaction. Some time after purchasing the property, I thought I would remodel it over into a hotel as there were no good hotels in Winlock. I asked Dr. Lueders where I might borrow the money to make the necessary changes, and he told me that Mr. Veness might make the loan. I did not know Mr. Veness very well, so I asked Dr. Lueders to speak to him for me concerning the proposed loan. Afterwards I also talked with Mr. Veness myself. He said he would let me have the money. I paid Dr. Lueders eight hundred dollars for the property and assumed the bill for lumber that he owed Mr.

(Testimony of Mrs. Maude Lueders.)

Veness when he first remodeled the old building into a hospital. I was not living at Winlock when the hospital building was erected. Dr. Luederes and I were married January 22, 1912.

Cross-examination.

(By Mr. RIDDELL.) [57]

I paid eight hundred dollars to Dr. Lueders. I also assumed the lumber bill. I think the lumber bill amounted to three hundred dollars. I paid the lumber bill out of the three thousand dollars I borrowed from Mr. Veness. I have repaid the loan that Mr. Veness made. I had no conversation with anyone about purchasing the property from Dr. Lueders. I purchased it in the exercise of my own judgment. Yes, I am a party to the civil suit of James M. Phillips, as trustee in bankruptcy, against A. W. Lueders and E. Maude Everitt. I know J. E. McGraw, a notary public, with offices in the Pioneer Building, Seattle, Washington. I signed a paper before him one day. Yes, that is the paper you handed me. (Herewith witness reads from the answer.) As to whether the statements contained therein are correct, I do not know. It is all legal phraseology and I don't quite understand it, but as near as I can understand it, it is correct, yes. Mr. Langhorne is our attorney. He sent us over this answer and I signed it. Did I buy this property from Dr. Lueders? Well, Mr. Agnew, my attorney down at Aberdeen told me I had not bought it from Dr. Lueders, even if I had paid him the money; that the party the deed came from was the party I bought it from. I

(Testimony of Mrs. Maude Lueders.)

don't know why the answer in the civil case says Dr. Lueders sold the contract to some third party. I thought the paper meant—well—I don't know what it does mean. I did not use all of the three thousand dollar loan in remodeling the hospital into a hotel. I had about fifteen hundred dollars left after finishing the work thereon. [58] As to my experience in the London Hospital. I worked therein for several months. I worked in other hospitals besides the London Hospital. My mother gave me the fifteen hundred dollars that I brought to this country with me. I was examined before the Referee in Bankruptcy. I didn't tell them how much money I had when I came to this country. Mr. Agnew, my attorney, told me it was none of their business, and I didn't volunteer the information. I did not think they were concerned about it. When I bought the property in Winlock from Dr. Lueders there was no affection between us. When I was examined before the trustee in bankruptcy I did say I bought the Winlock property from some people in Portland. I also testified that I bought it with my own money. I meant that I got the deed from parties in Portland and my attorney told me that was the party from whom it was purchased.

Mr. RIDDELL.—I now offer in evidence a certified copy of the complaint and answer in the case of J. M. Phillips, as trustee, vs. A. W. Lueders and E. Maude Everitt.

Whereupon same is admitted in evidence and marked Plaintiff's Exhibit 18.

Rebuttal Testimony.

[Testimony of J. A. Cross, for the Government (in Rebuttal).]

J. A. CROSS, a witness called for and on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

(By Mr. RIDDELL.)

Q. What is your name? A. J. A. Cross.

Q. What is your business? [59]

A. Court Reporter.

Q. Where? A. Aberdeen, Washington.

Q. Do you know the defendant? A. I do.

Q. Did you ever see him and know whether or not he testified in supplementary proceedings before Judge Mason Erwin? A. He did.

Q. Were you present? A. I was.

Q. Did you take down the testimony?

A. I did.

Q. Where are your notes?

A. I have got them here.

Q. The testimony in the supplementary proceedings?

A. No, I could not locate those notes. I misunderstood your question.

Q. Did you look for them? A. Yes.

Q. And are unable to find them? A. Yes.

Q. I show you that paper and ask you if you know what it is.

A. This is the transcript of defendant's testimony in the supplementary proceedings of A. W. Lueders.

(Testimony of J. A. Cross.)

Q. In the case I just asked you about? A. Yes.

Q. You were present? A. I was.

Q. How did you get this transcript, who made it?

A. I did. **[60]**

Q. Is it correct? A. Yes.

Q. Can you testify to what Lueders said at that time from your memory? A. No.

Mr. LANGHORNE.—What was your answer?

A. I cannot.

Mr. RIDDELL.—Can you by refreshing your recollection from this transcript? A. Yes, sir.

Mr. LANGHORNE.—You have no independent recollection of what he testified to on that trial?

A. I have not.

Mr. LANGHORNE.—The only means you have of knowing is by reference to a transcript of your notes taken at the time? A. That is all.

Mr. LANGHORNE.—I object to the testimony as absolutely incompetent. The witness has no recollection whatever of what defendant testified to at that time.

The COURT.—Objection overruled. Exception allowed.

Mr. RIDDELL.—I will ask you to refresh your memory by referring to that transcript and state whether or not Dr. Lueders was asked whether he resided in Winlock, Washington.

Mr. LANGHORNE.—Will that refresh your recollection, or are you just testifying from the transcript? Does the transcript recall to your mind affirmatively now what he testified to? **[61]**

(Testimony of J. A. Cross.)

A. No.

Mr. LANGHORNE.—We renew our objection.

The COURT.—Do you care to examine further on qualifications?

Mr. RIDDELL.—Looking at the transcript, after looking at the transcript are you able to swear to what the doctor testified?

A. Yes, I am able to testify that this is a transcript of the notes taken at the time, but by reference to the transcript, I cannot state that he testified to this; I haven't any recollection of him testifying to it.

Q. That is, you have not in your own mind?

A. No, sir.

Q. Do you know that is correct? A. I do.

Q. Do you swear that is correct?

A. I will swear that it is a correct transcript.

The COURT.—Objection overruled and exception allowed.

Mr. RIDDELL.—Did he state at that time—was he asked at that time whether he resided at Winlock, and he answered, "yes"? A. Yes.

Q. Was he asked if he ever owned any property, and he said, yes? A. He did.

Q. Was he asked at that time, "Did you ever own any real estate there?" and did he say, "No, sir"?

A. He did.

Q. Was he asked, "Did you ever have any interest in any real estate there?" and did he say, "No, sir"?

[62] A. He did.

[Endorsed]: "Filed U. S. District Court, Western District of Washington. Jan. 14, 1913. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy."

[Order Settling Bill of Exceptions as Amended, etc.]

United States of America.
Western District of Washington.—ss.

Now, on this 27th day of January, 1913, the above cause coming on for hearing on the application and notice of the defendant to settle the Bill of Exceptions and the amendments proposed thereto in said cause, defendant appearing by his attorneys, Messrs. Hayden & Langhorne, the Government appearing by its attorney, B. W. Coiner, and it appearing to the Court that defendant's Bill of Exceptions was duly served on the United States District Attorney for the Western District of Washington in the time provided by law, and that thereafter, within the time provided by law, amendments were served thereto, and that said proposed Bill and the amendments have been settled by this Court, the Court allowing proposed amendments, one (1), two (2), three (3), four (4) and five (5), and disallowing amendment numbered six (6), as set forth in the motion to amend, and that both parties now consent to the signing, and settling of said Bill of Exceptions as amended, and it appearing that the time for settling said Bill of Exceptions has not expired; and it further appearing to the Court that said Bill of Exceptions contains all the material facts occurring in the trial of said cause, together with the exceptions thereto, and all the material matters and things oc-

curring upon the trial, excepting the exhibits introduced in evidence, which are hereby made a part of said Bill of Exceptions, and the clerk of this court is hereby ordered and instructed to attach the same thereto.

Thereupon, upon motion of Maurice A. Langhorne, attorney for said defendant, it is hereby ORDERED that said proposed Bill of Exceptions, as amended, be and the same is hereby settled as a true Bill of Exceptions in said cause; that the same is hereby certified accordingly by the undersigned Judge of this court who presided at the trial of said cause, as a true, full and correct Bill of Exceptions, and the clerk of this court is hereby ordered to file the same as a record in said cause, and transmit the same to the Honorable Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 27th day of January, 1913.

EDWARD E. CUSHMAN,
District Judge.

[Endorsed]: "Filed U. S. District Court, Western District of Washington. Jan. 27, 1913. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy." **[63]**

[Stipulation Relative to Omission of Exhibits.]

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. ——.

A. W. LUEDERS,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

WHEREAS, on the trial of this cause in the District Court of the United States for the Western District of Washington, Southern Division, resulting in a judgment and sentence now brought here for review, certain exhibits were introduced in evidence which have heretofore been incorporated in and made a part of the Bill of Exceptions by the order of the Honorable Edward E. Cushman, Judge of the said District Court; and

WHEREAS, counsel for respective parties hereto deem that it is absolutely unnecessary for the proper disposition of the questions involved in this writ of error to have the said exhibits set out in extenso in the printed record;

NOW, THEREFORE, it is hereby stipulated and agreed by and between C. F. RIDDELL, Assistant U. S. District Attorney, and Elmer M. Hayden and M. A. Langhorne, attorneys for the defendant, that the transcript of the record sent up by the clerk of the District Court of the United States, for the Southern Division of the Western District of Wash-

ington, shall be printed as sent up, except that the said exhibits, and all of them, may be omitted from the Bill of Exceptions as it shall appear in the printed record, and that there shall be substituted in lieu thereof this stipulation, with the summary of the contents of the said exhibits hereinafter contained, specifying in each case the pages of the transcript record where said exhibit appears; and it is further stipulated that the said Bill of Exceptions so modified by this stipulation shall be printed as the Bill of Exceptions and appear as such in the printed record.

It is further stipulated that the said exhibits, if set out at length, would disclose the following facts respectively:

1. Plaintiff's Exhibit No. 1 [Typewritten Record, p. 64]. In the matter of A. W. Lueders, bankrupt. Petition of A. W. Lueders, of Aberdeen, Chehalis County, Washington, for adjudication as voluntary bankrupt; acknowledged at Aberdeen before Walter I. Agnew, Notary Public for the State of Washington, March 29, 1911.

2. Plaintiff's Exhibit No. 2 [Typewritten Record, p. 72]. In the Matter of A. W. Lueders, bankrupt. Order of reference to J. E. Stewart, Referee in Bankruptcy, dated March 31, 1911. Signed R. M. Hopkins, clerk, by Samuel D. Bridges, deputy. Enter, George Donworth, Judge.

3. Plaintiff's Exhibit 3 [Typewritten Record, p. 75]. In the matter of A. W. Lueders, bankrupt. Order of adjudication of A. W. Lueders as a voluntary bankrupt. Dated March 31, 1911. Signed R.

M. Hopkins, clerk, by Samuel D. Bridges, deputy. Enter, George Donworth, Judge.

4. Plaintiff's Exhibit No. 4 [Typewritten Record, p. 77]. In the matter of A. W. Lueders, bankrupt. Appointment of J. M. Phillips, as trustee in said bankruptcy. His bond fixed at $1,000. Dated February 23rd, 1912. Signed "J. E. Stewart, Referee in Bankruptcy."

5. Plaintiff's Exhibit 5 [Typewritten Record, p. 79]. In the matter of A. W. Lueders, bankrupt. Acceptance of trusteeship by J. M. Phillips, dated Feb. 27th, 1912.

6. Plaintiff's Exhibit 6 [Typewritten Record, p. 80]. In the matter of A. W. Lueders, bankrupt. Bond of J. M. Phillips as trustee in said bankruptcy in the sum of $1,000, dated Feb. 27, 1912. G. E. Chamberlain and A. G. McIntyre sureties. Justification of the said sureties before R. E. Taggart, Notary Public for the State of Washington residing at Aberdeen, Feb. 27, 1912.

7. Plaintiff's Exhibit No. 7 [Typewritten Record, p. 83]. In the matter of A. W. Lueders, bankrupt. Approval of trustee's bond by J. E. Stewart, Referee in Bankruptcy, dated Feb. 27, 1912.

8. Plaintiff's Exhibit No. 8 [Typewritten Record, p. 85]. Warranty deed from Carl Buege and wife to Nancy Reinhardt, dated August 26, 1907, consideration $1.00. Grantors grant, bargain, sell, convey and confirm certain property in Winlock, Lewis County, Washington, known hereafter as the St. James Hotel property. Two witnesses. Signed by Carl Buege and Adele Buege, his wife. Ac-

knowledged before S. A. DeVaney, Aug. 26, 1907. Copy certified to by H. H. Swofford, auditor of Lewis County, Dec. 13, 1912.

9. Plaintiff's Exhibit No. 9 [Typewritten Record, p. 89]. Warranty deed from Mrs. Nancy Reinhardt to Maude E. Everitt, dated Sept. 19, 1907, consideration $1.00, covering same property as that in Plaintiff's Exhibit No. 8. Two witnesses. Signed by Mrs. Nancy Reinhardt. Acknowledged before R. H. Dunn, notary public for the State of Oregon on Dec. 30, 1907. Copy certified to by H. H. Swofford, Dec. 13, 1912.

10. Plaintiff's Exhibit 10 [Typewritten Record, p. 93]. Quitclaim deed from L. W. Reinhardt to Maude E. Everitt, dated April 3, 1909, consideration $1.00. Same property as in plaintiff's exhibit No. 8. Two witnesses. Signed by L. W. Reinhardt and acknowledged before E. C. Warren at Oak Grove, Clackamas County, Oregon, on April 3, 1909. Certified by H. H. Swofford, auditor of Lewis County, Dec. 13, 1912.

11. Plaintiff's Exhibit No. 11 [Typewritten Record, p. 97]. Warranty deed from Maude E. Everitt to J. B. Huddleston, dated May 22, 1911. Consideration $100.00. Same property as in plaintiff's exhibit No. 8. Two witnesses. Signed by Maude Everitt. Acknowledged May 22, 1911, before S. K. Bowes, Notary Public for Washington at Aberdeen. Certified to by H. H. Swofford, auditor Lewis County, Dec. 13, 1912.

12. Plaintiff's Exhibit No. 12 [Typewritten Record, p. 102]. Warranty deed from N. E. Winnard

and wife to Maude E. Everitt, dated May 6, 1912. Consideration $10.00 and other valuable considerations. Covers certain property in Morrow County, Oregon. Two witnesses. Signed by N. A. Winnard and Charlotte L. Winnard. Acknowledged May 6, 1911, before C. E. Woodson, Notary Public for Oregon. Certified to by W. O. Hill, county clerk for Morrow County, Oregon, Dec. 2, 1912.

13. Plaintiff's Exhibit No. 13 [Typewritten Record, p. 105]. Warranty deed from J. B. Huddleston to Maude E. Everitt, dated May 5, 1911. Consideration $10.00 and other valuable consideration, conveying certain property in Morrow County, Oregon, subject to mortgage in favor of J. R. Nunamaker on which there was $5,000 due. Also subject to mortgage in favor of A. K. Higgs on which there was $8,000.00 due, which mortgages the grantee assumed and agreed to pay. Two witnesses. Signed by J. B. Huddleston. Acknowledged before C. E. Woodson, Notary Public for Oregon, and certified to by W. O. Hill, county clerk for Morrow County, Oregon, on Dec. 12, 1912.

14. Plaintiff's Exhibit No. 14 [Typewritten Record, p. 108]. Letter of J. M. Phillips dated Apr. 30, 1912, prior to indictment and suit mentioned in Exhibit 18, to Dr. A. W. Lueders, as follows:

"Dear Sir:—I have recently been appointed by J. E. Stewart, Referee in Bankruptcy, as Trustee of the estate of A. W. Lueders, bankrupt, and have qualified.

This letter is a demand on you for any assets

you possess which should be turned over to me as such trustee.

Very truly yours,

(Signed) J. M. PHILLIPS, Trustee."

15. Plaintiff's Exhibit No. 15 [Typewritten Record, p. 109]. Agreement between N. E. Winnard and E. M. Everitt, dated May 27, 1911, covering the sale of the Oregon property to E. M. Everitt for the price of $25,600, of which $13,000 is covered by mortgages on the property which E. M. Everitt is to assume. Of the balance $1,000 is to be paid in cash, $600.00 two months from the date of the agreement and the balance $11,000 to be paid by deed to the St. James Hotel property in Winlock, which is valued at $11,000. Three witnesses. Signed by N. E. Winnard, Charlotte L. Winnard, E. M. Everitt. Confirmation by Charlotte L. Winnard. Two witnesses.

16. Plaintiff's Exhibit No. 16 [Typewritten Record, p. 112]. Draft of the United States National Bank of Aberdeen, Washington, on the First National Bank of Portland, Oregon, in favor of E. M. Everitt for $1200.00, dated Feb. 11, 1911. Signed by A. S. Hoonan, teller. Endorsed on the back by E. M. Everitt.

17. Plaintiff's Exhibit No. 17 [Typewritten Record, p. 113]. Certificate of deposit of the Ladd & Tilton Bank, of Portland, Oregon, dated Feb. 13, 1911, in favor of E. M. Everitt for $1200.00. Signed by E. C. Philliber, teller, and Walter W. Cook, Assistant Cashier. Endorsed on back by E. M. Everitt.

18. Plaintiff's Exhibit 18 [Typewritten Record, p. 115]. Summons and complaint in an action in the Superior Court of the State of Washington in and for King County, entitled "J. M. Phillips, as Trustee in Bankruptcy of A. W. Lueders, vs. A. W. Lueders and E. Maude Everitt," the action being one to restrain the conveyance of the Oregon property described in Plaintiff's Exhibits 12 and 13, pending the outcome of the suit and then to compel its conveyance to the plaintiff as trustee in bankruptcy, for the benefit of the creditors of A. W. Lueders.

19. Defendant's Exhibit "A" [Typewritten Record, p. 126]. Letter of Helen King to the defendant, A. W. Lueders, written to Aberdeen, Washington.

20. Defendant's Exhibit "B" [Typewritten Record, p. 128]. In the matter of the bankruptcy of Lewis H. M. Williams. Petition of Alfred W. Lueders, E. M. Everitt and John G. Sorenson for the adjudication of Lewis H. M. Williams of Winlock, Washington, as a bankrupt, Alfred W. Lueders claiming an indebtedness arising from four promissory notes, each dated Oct. 1, 1909, for $500.00 each, and due three, six, nine and twelve months after date respectively. E. M. Everitt claiming an indebtedness in the sum of $400.00 as past due rental of St. James Hotel at Winlock by virtue of the terms of leasehold under which the rent reserved was $100.00 per month, payable in advance. John G. Sorenson claiming an indebtedness upon an assigned account in the sum of $183.47. One witness.

Signed by Alfred W. Lueders, E. M. Everitt and John G. Sorenson. Acknowledged March 14, 1910, before J. B. Quinn, Notary Public at Aberdeen, Washington.

21. Defendant's Exhibit "C" [Typewritten Record, p. 132]. Certificate of the marriage of A. W. Lueders and E. M. Everitt at Kalama, Washington, dated Jan. 22, 1912. Two witnesses. Signed by the contracting parties and J. W. Frescoln of the Methodist Episcopal Church.

22. Defendant's Exhibit "D" [Typewritten Record, p. 133]. Files of the Superior Court of the State of Wisconsin for Milwaukee County in the case entitled "Valeska Lueders, plaintiff, vs. Alfred W. Lueders, defendant," being the findings of fact, conclusions of law and judgment of divorce. The findings and judgment orders that $2,000 then on deposit in the Germania National Bank of Milwaukee to be a full and proper settlement in lieu of alimony and all other claims, and ordering the same to be paid to the plaintiff. The findings and conclusions are dated July 12, 1911, and signed by F. E. Eschwerley, Judge.

Dated this 19th day of March, 1913.

_____,
U. S. District Attorney.
C. F. RIDDELL,
Assistant U. S. Dist. Atty.
MAURICE A. LANGHORNE,
ELMER M. HAYDEN,
Attorneys for A. W. Lueders.

[Endorsed]: No. 2260. In the United States Circuit Court of Appeals, for the Ninth Circuit. A. W. Lueders, Plaintiff in Error, vs. United States of America, Defendant in Error. Stipulation. Filed Apr. 1, 1913. F. D. Monckton, Clerk.

In the District Court of the United States for the Western District of Washington, Southern Division.

No. 1192.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. W. LUEDERS,

Defendant.

Petition for Writ of Error.

To the Honorable EDWARD E. CUSHMAN, Judge of the District Court Aforesaid:

Comes now A. W. Lueders, the defendant herein, by his attorneys, Elmer M. Hayden and Maurice A. Langhorne, and respectfully shows:

That on the 18th day of December, A. D. 1912, a jury theretofore duly empaneled, found a verdict against your petitioner and in favor of the plaintiff herein, and that upon said verdict a final judgment was entered on the 30 day of December, 1912, against your petitioner, defendant herein, in which judgment and the proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the Assignment of Errors which is filed

with this petition.

WHEREFORE, your petitioner, feeling himself aggrieved by the said verdict and judgment entered thereon as aforesaid, prays that a writ of error may issued in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors so complained of [139] and that transcript of the judgment, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals, all in accordance with the laws of the United States in such cases made and provided.

ELMER M. HAYDEN,
MAURICE A. LANGHORNE,
Attorneys for the Petitioner.

[Endorsed]: "Filed U. S. District Court, Western District of Washington. Feb. 3, 1913. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy."

Due service of the within and foregoing Petition by the receipt of a true copy thereof, together with true copies of the exhibits recited therein as being attached thereto, hereby is admitted in behalf of all parties entitled to such service by law or by rules of court, this 3d day of February, 1913.

B. W. COINER. [140]

In the District Court of the United States for the Western District of Washington, Southern Division.

No. 1192.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. W. LUEDERS,

Defendant.

Assignments of Error.

Comes now the defendant in the above-entitled case, and in connection with his petition for Writ of Error makes the following assignments of error which he avers occurred upon the trial of the above-entitled cause, to wit:

I.

The Court erred upon the trial of said cause in admitting in evidence over defendant's objection the testimony of A. S. Hoonan with reference to the purchase by defendant in error of a certain draft in the sum of Twelve Hundred ($1,200.00) Dollars, from the United States National Bank at Aberdeen, Washington, on February 11, 1911. The questions and answers put to and made by said witness in this connection being as follows:

(By Mr. RIDDELL, Assistant U. S. District Attorney.)

My name is A. S. Hoonan. I am now assistant cashier of the U. S. National Bank, at Aberdeen, Washington. I was teller in that bank on February

11, 1911. I identify my signature to identification No. 6. [141]

Q. Tell the jury the circumstances of the execution of that paper.

Mr. LANGHORNE.—To that I object as absolutely immaterial. The defendant is not charged here with secreting or disposing of any money, or attempting to conceal the same from his trustee. The only charge contained in the indictment is that he concealed real estate described thereon. The testimony is therefore incompetent, irrelevant and immaterial.

The COURT.—The only charge in the indictment is the secreting of the particular real estate described. Unless the jury believes that the transaction about which this inquiry is made concerns the matter charged in the indictment, you will disregard his testimony. The objection overruled and exception allowed.

Q. Tell the jury the circumstances under which that draft was purchased.

Mr. LANGHORNE.—I renew my objection.

The COURT.—Objection overruled.

A. As I recall it, Mr. Lueders came into the bank.

Q. That is this defendant?

A. Yes, sir, and requested currency. I cannot tell you the exact amount he asked for, or if he asked for any amount, and that he was told by myself that I was not in possession of that amount of currency, whereupon he asked for a draft and the usual questions, of course, were asked about where he wanted to use it and in whose favor, and the draft was writ-

ten out and sold to Mr. Lueders.

Q. And this is the draft? A. This is the draft.

[142]

Mr. RIDDELL.—We will offer that in evidence as Plaintiff's Exhibit 16.

Mr. LANGHORNE.—Objected to for the reasons heretofore stated.

The COURT.—It will be admitted.

II.

The Court further erred in permitting the witness, Clyde L. Philliber, a clerk in the bank of Ladd & Tilton, Portland, Oregon, to testify over the objection of defendant in error, to the circumstances attending the issuance of a certain certificate of deposit by that bank in favor of one E. M. Everitt. The testimony is as follows:

(By Mr. RIDDELL, Assistant U. S. Attorney.)

My name is Clyde L. Philliber. I am a clerk in the bank of Ladd & Tilton, Portland, Oregon. Have been in that position since July, 1907. That is my signature (referring to Plaintiff's Identification No. 17). The other signature is that of Walter M. Cook, Assistant Cashier of the bank. I have but a faint recollection of the circumstances pertaining to the execution of that paper. On February 13, 1911, Mr. Cook came to my window with a draft from the U. S. National Bank of Aberdeen on the First National Bank of Portland, and requested that I give a certificate of deposit to E. M. Everitt. As I remember now, I was very busy at the time and Mr. Cook, the Assistant Cashier, wrote the certificate and had me sign it and he countersigned it. I can-

not say that I recognize Plaintiff's Exhibit 16, but it has my stamp upon it. It seems to have passed through my department in payment of this check here (Plaintiff's Identification 17). [143]

Mr. LANGHORNE.—To all of this we object as incompetent, immaterial and irrelevant, and for the reasons given in opposition to the admission of the testimony of Mr. Hoonan.

The COURT.—Objection overruled and exception allowed.

Mr. RIDDELL.—We offer in evidence paper marked as Plaintiff's Identification No. 17.

Mr. LANGHORNE.—I object for the reasons heretofore stated.

The COURT.—It will be admitted.

III.

The Court further erred in permitting defendant in error to be cross-examined as to certain testimony alleged to have been given by him in a certain proceeding in Chehalis County, Washington, supplementary to execution, wherein one John Forsgren was plaintiff and A. W. Lueders, defendant in error herein, was defendant. The testimony related to what the defendant in error had testified to concerning his ownership of certain real estate in Winlock, Lewis County, Washington, in that proceeding. The questions and answers put to and made by said witness in this connection being as follows:

(By Mr. RIDDELL.)

. . . . Yes, I remember having been summoned on supplementary proceedings in the Forsgren case down in Chehalis County, before Judge Mason Irwin.

Q. Doctor, you were asked at that time, were you not, whether or not you ever resided at Winlock?

A. Yes, sir.

Q. And you were asked about the property: "Have you ever [144] accumulated any property there or ever owned any property there?" and you answered you had owned some property there?

Mr. LANGHORNE.—I object to this line of examination on the ground of privilege and upon the further ground that it is not cross-examination; that it has no relevancy whatever to the issue now on trial.

The COURT.—Objection overruled and exception allowed.

A. Yes, sir.

Q. And then, Doctor, weren't you asked this question and wasn't this your answer: "Did you ever own real estate there?" and didn't you say, "No, sir"?

Mr. LANGHORNE.—Objected to for the reasons heretofore given.

The COURT.—Objection overruled.

A. I do not recollect. If you have got the evidence there, it is probably so.

Q. And then, were you not asked: "Did you ever have any interest in any real estate there?" and didn't you say, "No, sir"? A. I do not know.

Q. And then weren't you asked who owned the real estate on which the hotel stood, and didn't you answer, "E. M. Everitt owns that property"?

A. Yes.

Q. Now, you were under oath there, Doctor?

A. I presume so.

Q. Now, tell the jury why you have sworn in this case that you did own an interest in certain real estate in Winlock, and why on that occasion you swore you did not.

A. Well, if I did that, I probably thought I was being [145] asked the question, "Did I own it," to which I can consistently and truthfully *said* "No." I say that to-day.

Q. Doctor, I asked you a little while ago whether, at the time you had paid Buege for this property and it stood in the name of Mrs. Reinhardt, if you did not own it then. Don't you remember my asking you that a little while ago, and don't you remember saying that you did?

A. I do not remember now. Possibly.

Q. Why, Doctor, on that occasion down in the Superior Court in Chehalis County, when you were up on supplementary proceedings and you were asked, "Did you ever have any interest in real estate there?" why did you say "No, sir"?

A. I do not know as I did say it. If I did, that is the way I took it and construed it as having any interest. I had no interest in it any more than the furniture. That is all.

Q. At the time this property stood in the name of Mrs. Reinhardt, you owned it, didn't you?

A. Yes.

Q. Then, when they used this language, "Did you ever have any interest in any real estate there?" you understood that language to mean, "Have you any interest in any now"? A. Possibly I did; yes.

Q. And weren't you asked at that time: "Do you

recall the circumstances of buying a twelve hundred dollar draft February 8th in the name of E. M. Everitt?" and didn't you answer, "I bought no such draft as that"? [146] A. Yes.

Q. And weren't you asked, "You swear you never bought such a draft as that?" and you said "No"?

A. Yes, that is what I said.

Q. And they asked you "from the U. S. National Bank?" and you said—

A. Yes, sir I testified that I only owned some furniture in a hotel in Winlock. The man I sold it to went bankrupt. I threw him into bankruptcy. After he was thrown into bankruptcy, Mr. Benner, of Tacoma, was appointed trustee and he sold the furniture to Miss Everitt. She paid eight hundred dollars for it.

IV.

The Court further erred in permitting the witness, J. A. Cross, to testify over defendant's objection as to what defendant in error testified to in a certain proceeding had and held in the Superior Court of Chehalis County, Washington, in aid of proceedings supplementary to execution in the case of John Forsgren, plaintiff, vs. A. W. Lueders, defendant. The testimony was introduced for the alleged purpose of impeaching the testmony of defendant in error given on the trial of this action. The questions and answers put to and made by said witness in this connection being as follows:

(By Mr. RIDDELL, Assistant U. S. Attorney.)

Q. What is your name? A. J. A. Cross.

Q. What is your business? A. Court Reporter.

[147]

Q. Where? A. Aberdeen, Washington.

Q. Do you know the defendant? A. I do.

Q. Did you ever see him or know whether or not he testified in supplementary proceedings before Judge Mason Irwin? A. He did.

Q. Were you present? A. I was.

Q. Did you take down the testimony? A. I did.

Q. Where are your notes?

A. I have got them here.

Q. The testimony in the supplementary proceedings?

A. No, I could not locate those notes. I misunderstood your question.

Q. Did you look for them? A. Yes.

Q. And are unable to find them? A. Yes.

Q. I show you that paper and ask you if you know what it is.

A. This is a transcript of the defendant's testimony in the supplementary proceedings of A. W. Lueders.

Q. In the case I just asked you about? A. Yes.

Q. You were present? A. I was.

Q. How did you get this transcript? Who made it? [148] A. I did.

Q. Is it correct? A. Yes.

Q. Can you testify to what Lueders said at that time from your memory? A. No.

Mr. LANGHORNE.—What was your answer?

A. I cannot.

Mr. RIDDELL.—Can you by refreshing your recollections from this transcript? A. Yes, sir.

Mr. LANGHORNE.—You have no independent

recollection of what he testified to on that trial?

A. I have not.

Mr. LANGHORNE.—The only means you have of knowing is by reference to a transcript of your notes taken at the time? A. That is all.

Mr. LANGHORNE.—I object to the testimony as absolutely incompetent. The witness has no recollection whatever of what defendant testified to at that time.

The COURT.—Objection overruled and exception allowed.

Mr. RIDDELL.—I will ask you to refresh your memory by referring to that transcript and stating whether or not Dr. Lueders was asked whether he resided in Winlock, Washington?

Mr. LANGHORNE.—Will that refresh your recollection or are you just testifying from the transcript? Does the transcript recall to your mind affirmatively now what he testified to? [149]

A. No.

Mr. LANGHORNE.—We renew our objection.

The COURT.—Do you care to examine further on qualifications?

Mr. RIDDELL.—After looking at the transcript, are you able to swear to what the doctor testified?

A. I am able to testify that this is a transcript of the notes taken at the time, but by reference to this transcript I cannot state that he testified to this. I haven't any recollection of him testifying to it.

Q. That is, you have not in your own mind?

A. No, sir.

Q. Do you know that is correct? A. I do.

Q. Do you swear that it is correct?

A. I will swear that it is a correct transcript.

The COURT.—Objection overruled and exception allowed.

Mr. RIDDELL.—Did he state at that time—was he asked at that time whether he resided at Winlock and he answered "yes"? A. Yes.

Q. Was he asked if he ever owned any property and he stated "yes"? A. He did.

Q. Was he asked at that time, "Did you ever own any real estate there"? and he said, "No, sir"?

A. He did.

Q. Was he asked, "Did you ever have any interest in any real estate there"? and did he say "No, sir"?

A. He did. [150]

V.

The Court further erred in denying defendant's motion to set aside the verdict and granting a new trial on the ground that the testimony failed to show that defendant in error was guilty of the crime charged in the indictment, or of any crime.

WHEREFORE, defendant in error prays that the judgment against him in said lower court be reversed and that a new trial be granted.

ELMER M. HAYDEN,
MAURICE A. LANGHORNE,
Attorneys for Defendant, 408 Perkins Bldg., Tacoma, Washington.

[Endorsed]: "Filed U. S. District Court, Western District of Washington. Feb. 3, 1913. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy." [151]

In the District Court of the United States for the Western District of Washington, Southern Division.

No. 1192.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. W. LUEDERS,

Defendant.

Order [Allowing Writ of Error, etc.].

Now, on this third day of February, 1913, came the defendant A. W. Lueders, by his attorneys, Elmer M. Hayden and Maurice A. Langhorne, and filed herein and presented to the Court, his petition praying for the allowance of a Writ of Error, and also an assignment of errors intended to be urged by him, praying also that a transcript of the record and proceedings and papers upon which the judgment was rendered, after being duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises; and the Court being duly advised in all the premises;

IT IS ORDERED that the said Writ of Error be and the same is hereby allowed, and the said writ shall operate as a supersedeas if filed within 60 days from December 30th, 1912.

Done in open court this third day of February, 1913.

EDWARD E. CUSHMAN,
Judge. [152]

[Endorsed]: "Filed U. S. District Court, Western District of Washington. Feb. 3, 1913. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy." [153]

In the District Court of the United States, for the Western District of Washington, Southern Division.

No. 1192.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

A. W. LUEDERS,
Defendant.

Bail Bond.

United States of America,
Western District of Washington,—ss.

We, A. W. Lueders, defendant above named as principal, and Harry C. Beck and Ida Beck, his wife, and E. A. C. Smith and Leah L. Smith, his wife, as sureties, do hereby jointly and severally acknowledge ourselves indebted to the United States of America in the sum of TWO THOUSAND and no/100 ($2000.00) Dollars, lawful money of the United States of America, to be levied on our and each of our goods, chattels, lands and tenements upon this condition:

WHEREAS, the said A. W. Lueders, defendant

in the above-entitled cause has given notice of his intenton to cause his recent conviction and sentence in the above-entitled action, and the entire cause to be reviewed by a Writ of Error from the judgment of the District Court of the United States, for the Western District of Washington, Southern Division, in the above-entitled cause, in the United States [154] Circuit Court of Appeals for the Ninth Circuit.

Now, if the said A. W. Lueders shall appear and surrender himself in the District Court of the United States, for the Western District of Washington, Southern Division, on and after the filing in the said District Court of the mandate of the said Circuit Court of Appeals and from time to time thereafter, as he may be required to answer any further proceedings, and abide by and perform any judgment or order which may be had or rendered therein in this case, and shall abide by and perform any judgment or order which may be rendered in the said United States Circuit Court of Appeals for the Ninth Circuit, and not depart from the said District Court without leave thereof, then this obligation shall be void, otherwise to remain in full force and virtue.

WITNESS our hands and seals this 30th day of December, A. D. 1912.

A. W. LUEDERS.
E. A. C. SMITH.
LEAH L. SMITH.
HARRY C. BECK,
IDA BECK.

Taken and approved this 2d day of Jan. 1913.

EDWARD E. CUSHMAN,
District Judge. [155]

United States of America,
Western District of Washington,—ss.

I, F. M. Harshberger, Deputy United States clerk for the Western District of Washington, do hereby certify that on the 30th day of December, 1912, personally appeared before me A. W. Lueders and E. A. C. Smith, and Leah L. Smith, his wife, to me known to be the parties named in and who executed the foregoing instrument, as principal and sureties respectively, and acknowledged to me that they executed the same freely and voluntarily, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] F. M. HARSHBERGER,
Deputy Clerk, U. S. District Court, Western District of Washington.

United States of America,
Western District of Washington,—ss.

I, Wilbra Coleman, United States Commissioner residing at Sedro Wooley, Skagit County, in the State of Washington, do hereby certify that on the 30th day of December, 1912, personally appeared before me Harry Beck and Ida Beck, his wife, to me known to be the persons named in and who executed the foregoing instrument as sureties thereto, and acknowledged to me that they signed and sealed [156] the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 31st day of December, 1912.

[Seal] WILBRA COLEMAN,
United States Commissioner.

United States of America,
Western District of Washington,—ss.

E. A. C. Smith and Leah L. Smith, his wife, of 701 L. Street, in the city of Tacoma, in said District, sureties on the foregoing recognizance or bond, make oath and say, that the community consisting of E. A. C. Smith and Leah L. Smith, husband and wife, is a freeholder in the county of Pierce, Washington, and that it is worth the sum FIVE THOUSAND ($5,000) DOLLARS, over and above its just debts and liabilities in property subject to execution and sale, and that its property consists of the south half of section 17 (S. ½ sec. 17), township seven (7), range twenty-nine (29), W. M.

E. A. C. SMITH.
LEAH L. SMITH.

Subscribed and sworn to before me this 30th day of December, 1912.

[Seal] F. M. HARSHBERGER,
Deputy Clerk, U. S. District Court, Western District of Washington. [157]

United States of America,
Western District of Washington,—ss.

Harry Beck and Ida Beck, his wife, of the city of Sedro Wooley, Skagit County, Washington, in said Western District of Washington, sureties on the foregoing recognizance or bond, make oath and say, that the community consisting of Harry Beck and Ida

Beck, his wife, is a freeholder of the county of Skagit, and that it is worth the sum of FIVE THOUSAND ($5,000) DOLLARS, over and above its just debts and liabilities in property subject to execution and sale, and that its property consists of the west 24 rods of the east half of the southeast quarter (W. 24 rods E. ½ of SE. ¼) of the northwest quarter (NW. ¼), less a strip ten (10) rods by thirty-two (32) rods in the southeast corner thereof, and the west half of the southeast quarter (W. ½ SE. ¼) of the northwest quarter (NW. ¼), all in section 23, township 35, range 4 east, W. M.

HARRY C. BECK.
IDA BECK.

Subscribed and sworn to before me 31st day of December, 1912.

[Seal] WILBRA COLEMAN,
United States Commissioner for the Western District of Washington.

[Endorsed]: "Filed U. S. District Court, Western District of Washington. Jan. 2, 1913. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy." [158]

[Certificate of Clerk U. S. District Court to Transcript of Record, etc.]

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify the foregoing pages, numbered 1 to 158, inclusive, to contain a true and correct copy of the transcript of the record in the case of United

States of America, plaintiff and defendant in error, versus A. W. Lueders, defendant and plaintiff in error, as the originals thereof appear on file in this court at Tacoma, in said District.

And I further transmit herewith the Original Citation and Writ of Error, in said cause.

And I do further certify that the clerk's fees for preparing and certifying said transcript on appeal amounts to $61.50, which has been paid in full by the attorneys for plaintiff in error.

Attest my official signature and the seal of the said Court, at Tacoma, in said District, this 26th day of March, 1913.

[Seal] FRANK L. CROSBY,
Clerk.
By E. C. Ellington,
Deputy.

[Endorsed]: No. 2260. United States Circuit Court of Appeals for the Ninth Circuit. A. W. Lueders, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Southern Division.

Received March 29, 1913.
F. D. MONCKTON,
Clerk.

Filed April 1, 1913.
F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.
By Meredith Sawyer,
Deputy Clerk.

[Writ of Error (Original).]

The United States Circuit Court of Appeals for the Ninth Circuit.

The United States of America,

Ninth Judicial Circuit,—ss.

The President of the United States, to the Honorable EDWARD E. CUSHMAN, Judge of the District Court of the United States of America, for the Western District of Washington, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which is in the said District Court before you, between the United States of America, plaintiff, and A. W. Lueders, defendant, a manifest error hath happened to the great damage of the said A. W. Lueders, defendant, as by his complaint appears, we being willing that error, if any hath been done, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with the things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, in the State of California in said circuit on the fifth day of March next, in the said Circuit Court of Appeals to be then and there held, that the record and proceedings aforesaid, being inspected, the said Circuit Court of Appeals may cause further to be done therein to cor-

rect that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the United States, this 3d day of February, A. D. 1913, and 137th year of the Independence of the United States of America.

Issued at the office in Tacoma, Washington, in said circuit, with the seal of the District Court for the Western District of Washington and dated as aforesaid.

[Seal] FRANK L. CROSBY,
Clerk of District Court of the United States, Western District of Washington.

By F. M. Harshberger,
Deputy.

[Endorsed]: No. 1192. In the District Court of the United States for the Western District of Washington, Tacoma. A. W. Luedders, Plaintiff in Error, vs. United States of America, Defendant in Error. Writ of Error. Filed U. S. District Court, Western District of Washington. Feb. 3, 1913. Frank L. Crosby, Clerk. E. C. Ellington, Deputy.

No. 2260. United States Circuit Court of Appeals for the Ninth Circuit. Original Writ of Error. Received Mar. 29, 1913. F. D. Monckton, Clerk. Filed Apr. 1, 1913. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

The United States Circuit Court of Appeals for the Ninth Circuit.

No. ——.

A. W. LUEDERS,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Citation [on Writ of Error (Original)].

The United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States, to the United States of America and to Its Attorneys, B. W. Coiner and C. F. Riddell, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, in said Circuit, within thirty days from the date of this citation, pursuant to a Writ of Error filed in the clerk's office of the District Court of the United States, for the Western District of Washington, Southern Division, wherein A. W. Lueders is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD E. CUSHMAN, District Judge of the United States at Tacoma, within said circuit, this 3d day of February, A. D. 1913, and of the Independence of the United States of America, the 137th.

[Seal] EDWARD E. CUSHMAN,
U. S. District Judge.

Office of United States Marshal,
Western District of Washington,—ss.

I hereby certify and return that I served the within Citation on the within named United States Attorney, for the Western District of Washington, by handing to and leaving a certified copy thereof with B. W. Coiner, as United States Attorney.

Done at Tacoma this 3d day of February, 1913.

JOSEPH R. H. JACOBY,
United States Marshal.
By Ira S. Davisson,
Chief Deputy.

Marshal's fees—$2.00.

I hereby accept due personal service of this citation on behalf of the United States of America, defendant in error herein, this 3 day of February, 1913.

B. W. COINER,
Attorney for Defendants in Error.

[Endorsed]: Original. Served Feb. 3, 1913. No. 1192. In the United States District Court, Western District of Washington. Filed U. S. District Court, Western District of Washington. Feb. 4, 1913. Frank L. Crosby, Clerk. U. S. Marshal's Criminal Docket No. 4220.

No. 2260. United States Circuit Court of Appeals for the Ninth Circuit. Citation on Writ of Error. Received Mar. 29, 1913. F. D. Monckton, Clerk. Filed Apr. 1, 1913. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals, for the Ninth Judicial Circuit.

A. W. LUEDERS,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Order Extending Time to File Record.

For good cause shown,

IT IS NOW ORDERED that the time within which the return on the Writ of Error herein shall be filed in this court, be, and the same is hereby extend*ing* to and including the 5th day of April, A. D. 1913.

Dated February 20, 1913.

EDWARD E. CUSHMAN,

United States District Judge, Western District of Washington.

[Endorsed]: No. 1192. In the Circuit Court of the United States of Appeals. A. W. Lueders, Plaintiff in Error, vs. United States of America, Defendant in Error. Order Extending Time for Record. Filed U. S. District Court, Western District of Washington. Mar. 11, 1913. Frank L. Crosby, Clerk. E. C. Ellington, Deputy. G. O. B. 149.

No. 2260. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to and Including Apr. 5, 1913, to File Record Thereof and to Docket Case. Received Mar. 29, 1913. F. D. Monckton, Clerk. Filed Apr. 1, 1913. F. D. Monckton, Clerk.

No.————

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

A. W. LUEDERS,
Plaintiff in Error,

—VS.—

UNITED STATES OF AMERICA,
Defendant in Error.

APPEAL FROM THE DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, SOUTHERN DIVISION.

Brief of Plaintiff in Error

STATEMENT OF THE CASE.

On March 31, 1911, plaintiff in error, on his voluntary petition, was adjudicated to be a bankrupt, and on February 23, 1912, one J. M. Phillips was appointed as Trustee in Bankruptcy and qualified

on February 27, 1912. On September 20, 1912, the grand jury for the western district of Washington returned an indictment against plaintiff in error charging him with wilfully concealing certain of his assets from his trustee in bankruptcy, to wit, certain real estate situated in Morrow county, state of Oregon, and described as the east half of northeast quarter of section 27; the north half of section 26; the northeast quarter of southwest quarter of section 26; the north half of southeast quarter of section 26; the southeast quarter of southeast quarter of section 26; the south half of section 25; the south half of north half of section 25; the north half of north half of section 36; the west half of northeast quarter of section 35, all in township 3, south of range 25 east of W. M., and the southwest quarter of northwest quarter and northwest quarter of southwest quarter of section 30, in township 3 south of range 26 east of W. M.

The salient facts surrounding and giving rise to the indictment may be summarized about as follows:

By occupation the appellant is a physician and surgeon, and was at all the times hereinafter mentioned engaged in the active practice of his profession. From 1905 to 1909 appellant resided in Winlock, Lewis County, Washington (Transcript, pp. 21-44). In 1905 he purchased of one Carl Buege, under contract of sale, certain real estate situated in the town of Winlock (Transcript, pp. 21-22). The appellant completed his payments to Buege for

the land in the year 1907 (Transcript, page 22), and thereby became entitled to receive a deed to the land in question. At appellant's request Buege made deed to one Nancy Reinhardt, as grantee. Mrs. Reinhardt paid no consideration whatever for the deed and held the title in trust for appellant. The reason assigned by appellant why he had the deed taken in the name of Mrs. Reinhardt was due to the fact that he was a married man; that his wife had left him and that if he took the title in his own name he could not convey without her signature, and for these reasons he did not desire to take the title in his own name. Some time after he contracted to purchase the property from Buege he commenced the erection of a small hospital building on the land. In April of 1906 one E. Maude Everitt, who afterwards intermarried with appellant, went to Winlock in the capacity of a professional nurse and entered appellant's employ. She was in his employ at the time Buege, at appellant's request, made the deed to Mrs. Reinhardt. On or about September 19, 1907, Miss Everitt purchased the property from Dr. Lueders, and Mrs. Reinhardt, at his request, made a deed to Miss Everitt to the same (Transcript, page 66). After purchasing this property Miss Everitt decided to remodel it over into a hotel, and for that purpose borrowed the sum of Three Thousand Dollars from J. A. Veness, of Winlock, giving him as security a mortgage deed on the property in question. Miss Everitt paid Dr. Lueders the sum of Eight Hundred Dollars for the real estate in question and also assumed

the payment to Mr. J. A. Veness of a bill for lumber that he had furnished to Dr. Lueders when the hospital building was erected (Transcript, page 55). In the year 1909 appellant removed from Winlock, Washington, to Aberdeen, Washington, Miss Everitt accompanying him in the capacity of a nurse and clerk (Transcript, page 44). At the time Dr. Lueders left Winlock he was absolutely free from debt. He owed no one. On July 12, 1911, his wife, Valeska Lueders, obtained a decree of divorce in the Superior Court of the state of Wisconsin, for Milwaukee County. Appellant paid her the sum of Two Thousand Dollars in full settlement of all her claims against him, which settlement was ratified in the decree referred to (Tr., page 70). While living at Aberdeen and practicing his profession, one John Forsgren brought action of malpractice against him and obtained judgment in the sum of Five Thousand Dollars by default, which judgment was the moving cause of the bankruptcy proceedings.

On May 22, 1911, Miss Everitt conveyed the property in Winlock which she had purchased from appellant to one J. B. Huddleston, receiving in exchange therefor deeds from N. E. Winnard, J. B. Huddleston and others, to the lands situated in Morrow county, Oregon, and which are described in the indictment. The lands in Morrow county, Oregon, so received in exchange for the Winlock property were incumbered to the extent of Thirteen Thousand Dollars. Miss Everitt and appellant intermarried

at Kalama, Cowlitz county, Washington, on January 22, 1912.

It was the contention of the Government, as disclosed by the Bill of Particulars which was required to be furnished (Tr., pp. 7 and 8), that plaintiff in error was the beneficial owner of the lands in Morrow county, Oregon, which are described in the indictment, and that he was guilty of wilfully concealing the same from his trustee in bankruptcy because he did not immediately deed the same to the trustee upon his appointment and qualification. The only proof whatever, showing or tending to show that appellant was the owner of the lands described in the indictment, consists of certain statements made by him at divers times to different parties that he was the owner of the Winlock property.

Upon the trial of the action in the lower court, the Government, over protests and objections of appellant, was permitted to introduce in evidence the testimony of A. S. Hoonan and Clyde L. Philliber (Tr., 45-48) relating to the withdrawal of certain moneys from the United States National Bank at Aberdeen at a time prior to the appointment of the trustee in bankruptcy, which testimony the plaintiff in error claims to have no relevancy whatsoever to the crime charged in the indictment and that the testimony of said named witnesses was designed to create a prejudice against the plaintiff in error, having a tendency to show that he might be guilty of an offense distinct and separate from the one at-

tempted to be charged in the indictment. The trial court also permitted the appellant to be interrogated on cross-examination as to what he had sworn concerning the ownership of the Winlock property in a proceeding in the Superior Court of Chehalis County supplemental to execution in the case of *Forsgren vs. Lueders*, and also permitted the Government, in rebuttal, to introduce in evidence the testimony given by plaintiff in error in that proceeding. The specific reasons for our objections and protests to this character of evidence can best be understood and considered by reference to our

ASSIGNMENTS OF ERROR.

Comes now the defendant in the above entitled case, and in connection with his petition for Writ of Error makes the following assignments of error which he avers occurred upon the trial of the above entitled cause, to-wit:

I.

The Court erred upon the trial of said cause in admitting in evidence, over defendant's objection, the testimony of A. S. Hoonan with reference to the purchase by defendant in error of a certain draft in the sum of Twelve Hundred ($1,200.00) Dollars from the United States National Bank at Aberdeen, Washington, on February 11, 1911. The questions and answers put to and made by said witness in this connection being as follows:

(By MR. RIDDELL, Assistant U. S. District Attorney.)

"My name is A. S. Hoonan. I am now assistant cashier of the U. S. National Bank, at Aberdeen, Washington. I was teller in that bank on February 11, 1911. I identify my signature to identification No. 16.

Q. Tell the jury the circumstances of the execution of that paper.

MR. LANGHORNE: To that I object as absolutely immaterial. The defendant is not charged here with secreting or disposing of any money, or attempting to conceal the same from his trustee. The only charge contained in the indictment is that he concealed real estate described therein. The testimony is therefore incompetent, irrelevant and immaterial.

THE COURT: The only charge in the indictment is the secreting of the particular real estate described. Unless the jury believes that the transaction about which this inquiry is made concerns the matter charged in the indictment, you will disregard his testimony. The objection overruled and exception allowed.

Q. Tell the jury the circumstances under which that draft was purchased.

MR. LANGHORNE: I renew my objection.

THE COURT: Objection overruled.

A. As I recall it, Mr. Lueders came into the bank,

Q. That is the defendant?

A. Yes, sir, and requested currency. I cannot tell you the exact amount he asked for, or if he asked for any amount, and that he was told by myself that I was not in possession of that amount of currency, whereupon he asked for a draft and the usual questions, of course, were asked about where he wanted to use it and in whose favor, and the draft was written out and sold to Mr. Lueders.

Q. And this is the draft?

A. This is the draft.

MR. RIDDELL: We will offer that in evidence as Plaintiff's Exhibit 16.

MR. LANGHORNE: Objected to for the reasons heretofore stated.

THE COURT: It will be admitted.

II.

The Court further erred in permitting the witness, Clyde L. Philliber, a clerk in the bank of Ladd & Tilton, Portland, Oregon, to testify over the objection of defendant in error, to the circumstances attending the issuance of certain certificates of deposit by that bank in favor of one E. M. Everitt. The testimony is as follows: (By MR. RIDDELL, Assistant U. S. Attorney.)

My name is Clyde L. Philliber. I am a clerk in the bank of Ladd & Tilton, Portland, Oregon. Have been in that position since July, 1907. That is my signature (referring to Plaintiff's Identification No. 17). The other signature is

that of Walter M. Cook, Assistant Cashier of the bank. I have but a faint recollection of the circumstances pertaining to the execution of that paper. On February 13, 1911, Mr. Cook came to my window with a draft from the U. S. National Bank of Aberdeen on the First National Bank of Portland, and requested that I give a certificate of deposit to E. M. Everitt. As I remember now, I was very busy at the time and Mr. Cook, the assistant cashier, wrote the certificate and had me sign it and he countersigned it. I cannot say that I recognize Plaintiff's Exhibit 16, but it has my stamp upon it. It seems to have passed through my department in payment of this check here. (Plaintiff's Identification 17.)

MR. LANGHORNE: To all of this we object as incompetent, immaterial and irrelevant, and for the reasons given in opposition to the admission of the testimony of Mr. Hoonan.

THE COURT: Objection overruled and exception allowed.

MR. RIDDELL: We offer in evidence paper marked as Plaintiff's Identification No. 17.

Mr. LANGHORNE: I object for the reasons heretofore stated.

THE COURT: It will be admitted.

III.

The Court further erred in permitting defendant in error to be cross-examined as to cer-

tain testimony alleged to have been given by him in a certain proceeding in Chehalis County, Washington, supplementary to execution, wherein one John Forsgren was plaintiff and A. W. Lueders, plaintiff in error herein, was defendant. The testimony related to what the plaintiff in error had testified to concerning his ownership of certain real estate in Winlock, Lewis County, Washington, in that proceeding. The questions and answers put to and made by said witness in this connection being as follows:

(By MR. RIDDELL.)

* * * Yes, I remember having been summoned in supplementary proceedings in the Forsgren case down in Chehalis County, before Judge Mason Irwin.

Q. Doctor, you were asked at that time, were you not, whether or not you ever resided at Winlock?

A. Yes, sir.

Q. And you were asked about the property: "Have you ever accumulated any property there or ever owned any property there?" and you answered you had owned some property there?

MR. LANGHORNE: I object to this line of examination on the ground of privilege and upon the further ground that it is not cross-examination; that it has no relevancy whatever to the issue now on trial.

THE COURT: Objection overruled and exception allowed.

A. Yes, sir.

Q. And then, Doctor, weren't you asked this question and wasn't this your answer: "Did you ever own real estate there?" and didn't you say, "No, sir?"

MR. LANGHORNE: Objected to for the reasons heretofore given.

THE COURT: Objection overruled.

A. I do not recollect. If you have got the evidence there, it is probably so.

Q. And then, were you not asked: "Did you ever have any interest in any real estate there?" and didn't you say, "No, sir?"

A. I do not know.

Q. And then weren't you asked who owned the real estate on which the hotel stood, and didn't you answer, "E. M. Everitt owns that property"?

A. Yes.

Q. Now, you were under oath there, Doctor?

A. I presume so.

Q. Now, tell the jury why you have sworn in this case that you did own an interest in certain real estate in Winlock, and why on that occasion you swore you did not.

A. Well, if I did that, I probably thought I was being asked the question "Did I own it,"

to which I can consistently and truthfully say "No." I say that today.

Q. Doctor, I asked you a little while ago whether, at the time you had paid Buege for this property and it stood in the name of Mrs. Reinhardt, if you did not own it then. Don't you remember my asking you that a little while ago, and don't you remember saying that you did?

A. I do not remember now. Possibly.

Q. Why, Doctor, on that occasion down in the Superior Court in Chehalis County, when you were up on supplementary proceedings and you were asked, "Did you ever have any interest in real estate there?" why did you say "No, sir"?

A. I do not know as I did say it. If I did, that is the way I took it and construed it as having any interest. I had no interest in it any more than the furniture. That is all.

Q. At the time this property stood in the name of Mrs. Reinhardt, you owned it, didn't you?

A. Yes.

Q. Then, when they used this language, "Did you ever have any interest in any real estate there?" you understood that language to mean "Have you any interest in any now?"

A. Possibly I did; yes.

Q. And weren't you asked at that time "Do you recall the circumstances of buying a twelve

hundred dollar draft February 8 in the name of E. M. Everitt?" and didn't you answer, "I bought no such draft as that"?

A. Yes.

Q. And weren't you asked, "You swear you never bought such a draft as that?" and you said "No."?

A. Yes, that is what I said.

Q. And they asked you "From the U. S. National Bank?" and you said—

A. Yes, sir, I testified that I only owned some furniture in a hotel in Winlock. The man I sold it to went bankrupt. I threw him into bankruptcy. After he was thrown into bankruptcy, Mr. Benner, of Tacoma, was appointed trustee and he sold the furniture to Miss Everitt. She paid eight hundred dollars for it.

IV.

The Court further erred in permitting the witness, J. A. Cross, to testify over defendant's objection as to what plaintiff in error testified to in a certain proceeding had and held in the Superior Court of Chehalis County, Washington, in aid of proceedings supplementary to execution in the case of *John Forsgren, Plaintiff, vs. A. W. Lueders, Defendant.* The testimony was introduced for the alleged purpose of impeaching the testimony of defendant in error given on the trial of this action. The questions and answers put to and made by said witness in this connection being as follows:

(By MR. RIDDELL, Assistant U. S. Attorney.)

Q. What is your name?

A. J. A. Cross.

Q. What is your business?

A. Court reporter.

Q. Where?

A. Aberdeen, Washington.

Q. Do you know the defendant?

A. I do.

Q. Did you ever see him or know whether or not he testified in supplementary proceedings before Judge Mason Irwin?

A. He did.

Q. Were you present?

A. I was.

Q. Did you take down the testimony?

A. I did.

Q. Where are your notes?

A. I have got them here.

Q. The testimony in the supplementary proceedings?

A. No, I could not locate those notes. I misunderstood your question.

Q. Did you look for them?

A. Yes.

Q. And you are unable to find them?

A. Yes.

Q. I show you that paper and ask you if you know what it is?

A. This is a transcript of the defendant's

testimony in the supplementary proceedings of A. W. Lueders.

Q. In the case I just asked you about?

A. Yes.

Q. You were present?

A. I was.

Q. How did you get this transcript? Who made it?

A. I did.

Q. Is it correct?

A. Yes.

Q. Can you testify to what Lueders said at that time from your memory?

A. No.

MR. LANGHORNE: What was your answer?

A. I cannot.

MR. RIDDELL: Can you by refreshing your recollections from this transcript?

A. Yes, sir.

MR. LANGHORNE: You have no independent recollection of what he testified to on that trial?

A. I have not.

MR. LANGHORNE: The only means you have of knowing is by reference to a transcript of your notes taken at the time?

A. That is all.

MR. LANGHORNE: I object to the testimony as absolutely incompetent. The witness

has no recollection whatever of what defendant testified to at that time.

THE COURT: Objection overruled and exception allowed.

MR. RIDDELL: I will ask you to refresh your memory by referring to that transcript and stating whether or not Dr. Lueders was asked whether he resided in Winlock, Washington?

MR. LANGHORNE: Will you refresh your recollection or are you just testifying from the transcript? Does the transcript recall to your mind affirmatively now what he testified to?

A. No.

MR. LANGHORNE: We renew our objection.

THE COURT: Do you care to examine further on qualifications?

MR. RIDDELL: After looking at the transcript, are you able to swear to what the doctor testified?

A. I am able to testify that this is a transcript of the notes taken at the time, but by reference to this transcript I cannot state that he testified to this. I haven't any recollection of him testifying to it.

Q. That is, you have not in your own mind?

A. No, sir.

Q. Do you know that is correct?

A. I do.

Q. Do you swear that it is correct?

A. I will swear that it is a correct transcript.

THE COURT: Objection overruled and exception allowed.

MR. RIDDELL: Did he state at that time —was he asked at that time whether he resided at Winlock and he answered "yes"?

A. Yes.

Q. Was he asked if he ever owned any property and he stated "yes"?

A. He did.

Q. Was he asked at that time "Did you ever own any real estate there"? and he said, "No, sir"?

A. He did.

Q. Was he asked, "Did you ever have any interest in any real estate there?" and did he say, "No, sir"?

A. He did.

V.

The Court further erred in denying defendant's motion to set aside the verdict and grant a new trial on the ground that the testimony failed to show that defendant in error was guilty of the crime charged in the indictment, or of any crime.

ARGUMENT.

Some of the questions arising out of the assignments of error 1, 2, 3 and 4 can be grouped and argued together. The indictment, which consists of one count, charges that the plaintiff in error did on the 23rd day of February, 1912, commit the crime of concealing from his trustee in bankruptcy certain described real estate situated in Morrow county, Oregon. The manner or method of concealment is not set forth in the indictment. The lower court concluded that the indictment was good as against a demurrer, but required the District Attorney to furnish defendant with Bill of Particulars, setting forth the method or manner adopted by plaintiff in error in concealing the property from his trustee in bankruptcy. The Bill of Particulars so furnished set forth that plaintiff in error concealed the property described in the indictment by carrying the same in the name of one E. Maude Everitt. This is as far as the Bill of Particulars went. On the trial in the lower court, the Government, over the objection of counsel for the plaintiff in error, was permitted to show that on February 11, 1911, some six weeks prior to the filing of the petition in bankruptcy, and more than one year prior to the appointment of the trustee in bankruptcy, plaintiff in error purchased a draft in the sum of $1,200.00 from the United States National Bank at Aberdeen, and further permitted proof that on February 13, 1911, two days later, plaintiff in error deposited the proceeds of this

draft in the Ladd & Tilton Bank at Portland, Oregon. The draft was purchased in the name of E. Maude Everitt and the certificate of deposit taken out in her name. It was, of course, the contention of the Government that the money represented by the draft was the property of the plaintiff in error, and the inevitable tendency of such testimony was to show that he was guilty of another and distinct crime than the one alleged in the indictment, and to prejudice the jury against him and his defense. The objection of counsel for plaintiff in error to this line of testimony was overruled by the trial judge in the following language.

> "The only charge in the indictment is the secreting of the particular real estate described. Unless the jury believes the transaction about which this inquiry is made concerns the matter charged in the indictment, you will disregard the testimony." (Tr., p. 46).

With all due deference to the learned trial judge, we wish to observe that the law makes it his duty and not that of the jury to pass upon competency, materiality and relevancy of testimony. He can't shirk that duty in the novel manner adopted by him in this case. However, the error in admitting this line of evidence did not stop with the testimony of Hoonan and Philliber. While the plaintiff was on the stand he admitted that prior to the making of the deed from Mrs. Reinhardt to Miss Everitt he owned the real estate described in that deed. While under

cross-examination and over our objection, the District Attorney was permitted to question the defendant as to whether or not in a certain proceeding in the Superior Court of Chehalis County, Washington, wherein one Forsgren was plaintiff, and plaintiff in error was defendant, he testified that he never did own any interest in this particular real estate described in the deed from Reinhardt to Everitt. And in rebuttal he also permitted the government to have read to the jury a transcript of his testimony in that proceeding, from which transcript it would appear that plaintiff in error had testified that he never owned any real estate at Winlock. The unmistakable drift of this testimony was for the sole purpose of leading the jury to believe that plaintiff in error was guilty of the crime of perjury. Had the plaintiff in error ever testified in any former proceeding that he had owned, or did own an interest in the real estate in Winlock, and had on trial of this action testified to the contrary, then it would have been permissible to have impeached him by showing that at a different time and place he had admitted owning an interest in the real estate in Winlock, and it could not have been successfully argued that because the tendency of such testimony was to show that plaintiff in error had committed the crime of perjury that the testimony would be inadmissible. But, under the circumstances, there was no occasion or reason whatsoever for introducing in evidence a statement made under oath by the plaintiff in error that he never owned any interest in the real estate in Winlock. As

we have said, plaintiff in error, upon trial of the present action, admitted that he had once owned an interest in this real estate, and as to whether or not he had at any other time and place, made a contrary statement was entirely collateral and irrelevant to the present inquiry. A variant statement, in order to be admissible for the purpose of impeachment, must be relevant to the matter at issue in the cause on trial.

10 Ency. P. & P., p. 294, ___ Ed.;
U. S. vs. Hughes, 34 Fed. 732;
U. S. vs. White, 5 Cranch C. C., 38; Fed. Cas. No. 16675.
Sconce vs. Henderson, 102 Ill. 376;
Peck vs. Parchen, 52 Iowa, 46; 2 N. W., 597.
Smitson vs. Southern Pacific Co., 37 Oreg. 74; 60 Pac., 907.
State vs. Davidson, 70 N. W. 879;
Alger vs. Castle, 17 Atl., 727;
People vs. Cole, 59 Pac., 984;
State vs. Irwin, 71 Pac., 608;
Butler vs. Cooper, 42 Pac., 839;
Com. vs. McLaughlin, 122 Mass., 449;
Curran vs. Percival, 21 Neb., 434; 32 N. W., 213;
Patterson vs. Wilson, 8 S. E., 341;
Williams vs. Culver, 39 Oreg., 337; 64 P. 763.
Shephard vs. State, 59 N. W.,449;
Merchants Life Ass'n vs. Yoakum, 98 Fed., 251; 39 C. C. A. 56;
Steen vs. Santa Clara Valley M. & L. Co., 66 Pac., 321;

Stalcup vs. State, 146 Ind., 270; 45 N. E. 334;
Murphy vs. Backer, 67 Minn., 510; 70 N. W. 799.
People vs. Ryan, 8 N. Y. S., 241.

That the admission of the testimony of Hoonan, Philliber and Cross had a tendency to prove that the plaintiff in error was guilty of crimes other than the crime alleged in the indictment, and that that was the sole purpose of the testimony is too plain for argument. Its admission was error of the most poisonous kind. The general rule is that on a prosecution for a particular crime, evidence which in any manner shows or tends to show that the accused has committed another crime wholly independent of that for which he is on trial, even though it be a crime of the same sort, is irrelevant and inadmissible.

Com. vs. Campbell, 155 Mass., 537, 30 N. E. 72;
Com. vs. Jackson, 132 Mass., 16.
Com. vs. Campbell, 83 Am. Dec., 705;
People vs. Robertson, 89 N. W., 340;
Brown vs. State, 72 Miss., 997; 17 So. 278.
Boyd vs. U. S., 142 U. S., 450, 12 S. Ct. 292, 35 L. Ed. 1077;
People vs. Arlington, 55 Pac., 1003;
People vs. Jones, 32 Cal., 80;
Underhill on Crim. Ev., Sec. 88;
Wharton, Crim. Ev., 9th Ed., Sec. 48;
Abbott, Trial Briefs, Crim. Trials, Sec. 598.

"The general rule of evidence applicable to

criminal trials is that the state cannot prove against the defendant any crime not alleged in the indictment, either as a foundation for a separate punishment or as aiding the proofs that he is guilty of the crime charged."

Bishop New Crim. Pro. Section 1120.

In *Coleman vs. People*, 55 N. Y., 81, it is laid down as follows:

"The general rule is against receiving evidence of another offense. A person cannot be convicted of one offense upon proof that he has committed another, however persuasive in a moral point of view such evidence may be. It would be easier to believe a person guilty of one crime if it was known that he had committed another of similar character, or, indeed of any character; but the injustice of such a rule in courts of justice is apparent. It would lead to convictions upon the particular charge made by proof of other acts in no way connected with it, and to unite evidence of several offenses to produce conviction for a single one."

In *People vs. Shea*, 147 N. Y., 78, 41 N. E., 505, the rule is thus stated:

"The impropriety of giving evidence showing that the accused had been guilty of other crimes, merely for the purpose of thereby inferring his guilt of crime for which he is on trial, may be said to have been assumed and consis-

tently maintained by the English courts ever since the common law has itself been in existence. Two antagonistic methods for the judicial investigation of crime and the conduct of criminal trials have existed for many years. One of these methods favors this kind of evidence in order that the tribunal which is engaged in the trial of the accused may have the benefit of the light to be derived from a record of the whole past life of the accused, his tendencies, his nature, his associates, his practices, and, in fine, all the facts which go to make up the life of a human being. This is the method which is pursued in France, and it is claimed that entire justice is more apt to be done where such course is pursued than where it is omitted. The common law of England, however, has adopted another, and, so far as the party accused is concerned, a much more merciful doctrine. By that law the criminal is to be presumed innocent until his guilt is made to appear beyond a reasonable doubt to a jury of twelve men. In order to prove his guilt it is not permitted to show his former character, or to prove his guilt of other crimes, merely for the purpose of raising a presumption that he who would commit them would be more apt to commit the crime in question."

The Supreme Court of Mass. in *Com. vs. Jackson*, 132 Mass., 16, has said:

"The objections to the admission of evidence

as to other transactions, whether amounting to indictable crimes or not, are very apparent. Such evidence compels the defendant to meet charges of which the indictment gives him no information, confuses him in his defense, raises a variety of issues and thus divides the attention of the jury from the one immediately before it, and, by showing the defendant to have been a thief on other occasions, creates a prejudice which may cause injustice to be done him."

In *Shaffner vs. Com.*, 72 Pa., 60, 13 Am. Rep. 649, the rule is thus enunciated:

"It is the general rule that a distinct crime unconnected with that laid in the indictment cannot be given in evidence against a prisoner. It is not proper to raise a presumption of guilt on the ground that his having committed one crime, the depravity there exhibited makes it likely he would commit another. Logically, the commission of an independent offense is not proof in itself of a commission of another crime. Yet it cannot be said to be without influence on the mind, for certainly if one be shown to be guilty of another crime equally heinous, it will prompt a more ready belief that he might have committed the one with which he is charged. It therefore predisposes the minds of the jurors to believe the prisoner guilty."

Such is the general rule. There are certain exceptions, however, to this rule, which cannot always

be stated with categorical precision. Generally speaking, evidence of other crimes is competent to prove the specific crime charged when it tends to establish motive, intent, the absence of mistake or accident, a common scheme or plan embracing the commission of two or more crimes so relating to each other that proof of one tends to establish the others.

Wharton Crim. Ev., 10th Ed., Sec. 31;

Did the admission of the evidence complained of fall within any of the recognized exceptions to the general rule? To state the question is to argue it. No fact, which, on principle of sound logic, does not sustain or impeach a pertinent hypothesis, unless otherwise provided by some positive prescription of law, should be admitted as evidence on a trial. The reasons for this rule are obvious. The sixth amendment to the Federal Constitution provides that the accused "shall be informed of the nature and cause of the accusation." To admit evidence of collateral facts is to oppress the accused by trying him on charges, the nature and cause of which he has not been informed and which he has made no preparation to meet, and by prejudicing the jury against him by making prima facie proof of alleged offenses that he is not prepared to disprove, or by proving certain facts from which an inference may arise that the accused has been guilty of some other crime than the one charged in the indictment. As was well said by the Supreme Court of Wisconsin, in *State vs. Paulson*, 118 Wis., 89, 94 N. W., 771:

> "From the time when advancing civilization began to recognize that the purpose and end of a criminal trial is as much to discharge the innocent accused as to punish the guilty, it has been held that evidence against him should be confined to the very offense charged, and that neither general bad character, nor commissions of other specific, disconnected acts, whether criminal or merely meretricious, could be proved against him. This was predicated on the fundamental principle of justice that the bad man, no more than the good, ought to be convicted of a crime not committed by him."

Now, if the testimony relative to the purchase of the twelve hundred dollar draft from the U. S. National Bank at Aberdeen, and its subsequent deposit in the banking house of Ladd & Tilton, at Portland, Oregon, was not designed to show that plaintiff in error was guilty of another and distinct crime than the one laid in the indictment, then what was its purpose? What relevancy did such testimony have to the issue arising out of the charge laid in the indictment? The draft was purchased on February 11, 1911, six weeks before plaintiff in error filed his petition to be adjudicated a bankrupt and more than one year before the appointment of the trustee in bankruptcy. So far as the record in this case discloses, plaintiff in error was not contemplating bankruptcy at the time of the purchase of the draft in question. Neither was he contemplating a sale

or exchange of the Winlock property, conceding, for the sake of argument, that he controlled the title thereto, but, on the contrary, the testimony of P. E. Alvord (Tr., pp. 27-28-29) and Dr. Winnard (Tr., p. 39) affirmatively shows that the exchange of the two properties was never broached until May of 1911, some three months subsequent to the purchase of the twelve hundred dollar draft. Thus a perfectly innocent transaction was cloaked in the guise of a crime and paraded before the jury for the sinister purpose of awakening a prejudice against him that was futile to try to overcome. And the same purpose was also served when the lower court permitted testimony to show that plaintiff in error had at a previous time and place testified that he never owned any interest in the Winlock realty. Instead of confining the proof to the crime charged in the indictment, namely, concealing of certain real estate from his trustee in bankruptcy, plaintiff in error was tried for the alleged offense of concealing twelve hundred dollars in money from his trustee in bankruptcy, and also tried for the alleged crime of perjury. Not the slightest attempt was made on the part of the government to show that plaintiff in error was in possession of the sum of twelve hundred dollars after he was adjudged a bankrupt, but, on the contrary, contented itself with showing that some weeks prior to his adjudication of bankruptcy he purchased a draft at Aberdeen calling for the payment of the sum of twelve hundred dollars and afterwards took the draft to Portland and deposited the

same in a bank in that city, receiving in exchange a certificate of deposit calling for a like amount of money. The testimony, of course, shows that the draft was purchased in the name of Miss Everitt and the certificate of deposit was in her name, but the theory of the government was that the money represented by the draft and the certificate of deposit belonged to plaintiff in error. What relevancy this testimony had to the main issue is beyond the comprehension of the writer. Its admission finds no support in the text books or the decisions.

In *Jordan vs. Osgood*, 109 Mass., 457, in the trial of an action which presented the issue whether the defendant obtained the goods from the plaintiff by fraudulent representations, and also the issue whether he obtained the goods intending at the time not to pay for them, it was held that evidence of other frauds committed by the defendant about the time of obtaining the goods and making the alleged representation was not admissible upon either issue unless it appeared that such frauds and the obtaining of the goods in question were parts of one fraudulent scheme committed in the pursuance of a common purpose. In that case the court said:

> "The fact that a defendant has committed a similar but distinct crime or fraud is not competent to prove that he committed the particular crime or fraud with which he is charged. It has no tendency to prove the proposition to be established by the plaintiffs, but is equally consistent

with an affirmative or negative decision of that proposition. The effect of such proof may be to produce such a state of mind in the jury to whom it is addressed, that a less weight of testimony satisfied them than would otherwise be necessary to produce conviction, but it does not directly tend to prove or disprove the matter in dispute. The admission of such evidence would introduce a multiplicity of collateral issues calculated to withdraw the attention of the jury from the real issues in the case; and it would operate unjustly to the defendant, as it requires him to explain his transactions with others without any notice or opportunity for preparation."

In *State vs. Bokien*, 14 Wash., 403, in which the defendant was charged with obtaining goods under false pretenses by means of a check drawn on a bank in which he had no funds, the state was permitted, over the objection of defendant, to introduce in evidence several checks drawn by him prior to the date of the one in question, and to prove that they had been presented to the bank by the persons to whom they were given and were not paid because the defendant had no funds on deposit and the defendant knew that payment thereof had been refused. In holding the admission of this testimony constituted a reversible error, the Supreme Court of Washington said:

"There was no connection whatever between

the several transactions which were permitted to be shown and that for which the defendant was being tried, and the evidence objected to was therefore incompetent for any purpose. We are of course aware there are exceptions to the general rule that it is not competent to show the commission of another distinct crime by the defendant for the purpose of proving that he is guilty of the crime charged, but we are of the opinion that the evidence here admitted does not come within any of the exceptions * * * The evidence was not competent to prove the intent of the defendant in the particular transaction mentioned in the information for the reason that it did not logically or legitimately show that he intended to defraud Sharick because he had defrauded other parties at various times previously. It was not competent for the purpose of showing defendant's motive, for that as well as his intent, would be inferred from his acts. The question of mistake was not involved in the case and the previous transactions of the defendant, which were permitted to be shown, no more form a part of a single scheme than the several larcenies of a thief; and it certainly would not be competent in order to show that one had stolen certain property to prove that he committed larceny at a previous time. The evidence as to these facts which were not mentioned in the information must have been greatly prejudicial to the defendant, for it in effect com-

pelled him, without previous notice, to acquit himself of at least seven distinct offenses in addition to the one with which he was directly charged."

In *People vs. Schweitzer*, 23 Mich., 301, the learned judge who delivered the opinion of the court said:

"We see no legal ground upon which the witness Dunphy could have been allowed to testify to the commission by the defendant of another and distinct larceny from that for which he was on trial. The general rule is well settled that the prosecution are not allowed to prove the commission of another and distinct offense, though of the same kind with that charged, for the purpose of rendering it more probable in the minds of the jury that he committed the offense for which he is on trial; and this would be the natural and inevitable effect upon the minds of the jury, of the admission of such evidence, on whatever ground or pretense it might be admitted, and the defendant would thus be prejudiced on the trial of the offense charged, by proof which he has no reason to anticipate, of an offense for which he is not on trial, and to which, when properly called upon to defend, he may have a perfect defense."

In *Boyd vs. U. S.*, 35 L., Ed. 1077, the Supreme Court of the United States reversed a conviction for murder because of the erroneous admission of testi-

mony designed to show that the defendant had been guilty of several robberies committed prior to the day of the alleged murder. The admissibility of the evidence was attempted to be sustained on grounds discussed in the opinion on page 1078 of the reported case. In holding the admission of this testimony erroneous the court said:

> "Whether Standley robbed Brinson and Mode, and whether he and Boyd robbed Hall were matters wholly apart from the inquiry as to the murder of Dansby. They were collateral to the issue to be tried. No notice was given by the indictment of the purpose of the government to introduce proof of them. They afford no legal presumption or inference as to the particular crime charged. Those robberies may have been committed by the defendants in March and yet they may have been innocent of the murder of Dansby in April. Proof of them only tended to prejudice the defendants with the jurors, to draw their minds away from the real issue, and to produce the impression that they were wretches whose lives were of no value to the community and who were not entitled to the full benefit of the rules prescribed by law for the trial of human beings charged with crime."

In *Marshall vs. U. S.*, 197 Fed., 511, defendant was indicted of devising a scheme to defraud and using the U. S. mail in furtherance thereof. On the trial the government was permitted to introduce

testimony tending to show that defendant had engaged in other similar schemes. In holding that this testimony was inadmissible, the Circuit Court of the United States for the second circuit said:

> "In order to prove guilty intent the government introduced testimony showing the defendant's connection with another similar scheme. The admission of such testimony is an exception to the general rule. It is allowed where a guilty intent must be shown, to meet the presumption of accident or mistake. Such is the case of passing counterfeit money, or filing undervaluing invoices 'with intent to evade' the custom laws or making representation 'with intent' to obtain property thereby. When the government has proved that the defendant has passed counterfeit coin, or has filed an undervaluing invoice, or has made false representations, the case is not fully made out. Every one of these things might be done innocently in one instance, but hardly in many instances. The exception ought not to be extended. Such testimony certainly prejudices the defendant even if the court charges the jury that it is admitted only to show intent. It is not needed in the case of a scheme to defraud. It would be impossible to find the existence of a scheme to defraud without finding also the fraudulent intent of the person who devised it. The moment the fraudulent scheme is established, there is no necessity for resorting to

other transactions, as in the excepted cases mentioned. No one can have an innocent intent in devising a fraudulent scheme."

II.

Another objection to the reception of the evidence complained of is grounded upon the proposition that the bill of particulars which the lower court required the government to furnish plaintiff in error failed to apprise defendant that he would be confronted with this species of evidence upon the trial. It is a well grounded rule that on prosecution for crime the court will limit the government in its evidence to those facts set forth in the bill of particulars.

U. S. vs. Adams Ex. Co., 119 Fed., 240;
Regent vs. People, 96 Ill., App., 189;
Young vs. State, 26 Ohio Cir. Ct. R., 747.

"Another object of a bill of partculars is to prevent surprise on the trial by furnishing that information which a reasonable man would require respecting the matters against which he is called to defend himself; and by thus limiting the generality of the pleadings its effect is to confine the proof to the particulars specified."

3 Ency. of P. & P., pp. 519-20 and authorities there cited.

"Fraud in criminal prosecutions cannot be proved by evidence not within the scope of a bill of particulars furnished."

McDonald vs. People, 126 Ill. 150, 9 Am. St. Rep. 547; 18 N. E. 817.
See also: *Dudley vs. Duval*, 29 Wash., 528;
1 Bishop New Crim. Pro., p. 643;
State vs. Van Pelt, 49 S. E., 177.

III.

The action of the court in permitting the witness Cross to contradict the testimony of plaintiff in error by reading from a transcript of his testimony given in the supplemental proceedings in the case of *Forsgren vs. Lueders*, was palpably erroneous. The witness, Cross, testified that he had no independent recollection whatsoever of what plaintiff in error testified to in that proceeding and that a reference to the testimony would not in any manner refresh his recollection. Notwithstanding this positive statement of the government's witness, the lower court, over the protest and objection of counsel for plaintiff in error, permitted Cross to read from his transcript the purported testimony of plaintiff in error in the proceeding hereto referred to. This very question has twice been before the Supreme Court of the State of Washington. In case of *State vs. Freidrich*, 4 Wash., 209, counsel for the defendant attempted to contradict the testimony of a witness by having the stenographer who had reported his testimony in a former proceeding read his notes of the witness' former testimony. The state's objection to the reading was sustained, and on appeal the ac-

tion of the lower court in this respect was assigned as error. The court said:

"We do not think appellant's proposition that he should have been allowed to read the long hand notes can be sustained. He was seeking to prove a negative, viz., that Longstaff had not testified on the first trial that he had spoken to appellant about the ring on his finger. Bowman was present and competent to testify as to that. He could have been asked whether Longstaff had testified as he claimed; and if unable to answer without his notes he could have been permitted to refer to them to refresh his recollection. But, independent of him, his notes had no standing in court. *State vs. Baldwin*, 36 Kan., 1. Counsel, we think, errs upon this point through his viewing Bowman as an official of the court. He cites *People vs. Morine*, 61 Cal., 367, where the reading of reporter's notes was sustained. The only point there considered, however, was whether the oath of an official reporter to the correctness of his notes, at the trial, was equivalent to his certificate required by statute, and the court, in effect, said it was. But this was under the California statute, which makes reporter's notes, when written out and certified, *prima facie*, a correct statement of testimony. Cal. Code of Civ. Proc., Sec. 273. We have no such basis for the ruling asked."

This ruling in the above case was adherred to in *Kellogg vs. Scheuerman*, 18 Wash., 293.

In conclusion, we have to say that plaintiff in error was denied that fair and impartial trial to which he was entitled under the constitution and laws of the land. Erroneous testimony of the most damaging character was admitted against him, over the protest and objection of his counsel. If error was admitted in the admission of the testimony of the witnesses, Hoonan, Philliber and Cross, it needs no argument or citation of authorities to demonstrate how prejudicial to the rights of defendant its admission was. The rule that we contended for in the lower court — the rule that we contend for here, so universally recognized and so firmly established in all English-speaking lands—is recorded in that jealous regard of the liberty of the individual which has distinguished our jurisprudence from all others, at least from the birth of Magna Charta. It is the product of that same humane and enlightened spirit which, through our common law, has decreed that every person charged with the commission of a crime shall be protected by the presumption of innocence until his guilt of the particular crime charged has been proven beyond a reasonable doubt. The judgment appealed from should be reversed with directions to grant a new trial.

Respectfully submitted,

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